

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

May 30, 2013  
**CITY COUNCIL CHAMBERS**  
**555 S. 10<sup>TH</sup> STREET**

The May 30, 2013, meeting of the Commission on Human Rights was called to order at 4:00 p.m. by Hazell Rodriguez, Vice Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Commissioners: Sue Oldfield, Takako Olson, Hazell Rodriguez (Vice Chair), Bennie Shobe, and Micheal Thompson. Quorum was present.

**MEMBERS ABSENT:**

Commissioners: Gene Crump (Chair), Liz King, and Mary Reece.

**STAFF PRESENT:**

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

**APPROVAL OF APRIL 11, 2013 MINUTES:**

A motion was made by Shobe and seconded by Thompson to approve the minutes of the previous meeting.

Hearing no discussion, Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Rodriguez, Shobe, and Thompson. Abstaining was Olson. Motion passed.

**APPROVAL OF MAY 30, 2013, AGENDA:**

A motion was made by Rodriguez and seconded by Olson to approve the May 30 meeting agenda. Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion passed.

**CASE DISPOSITIONS:**

**LCHR #12-0904-041-E-R**

A motion was made by Oldfield and seconded by Shobe to recommend a finding of **No Reasonable Cause**.

Shobe questioned how the Respondent was working to meet the accommodations needed for the Complainant. Lemke discussed the issues and the Complainant's restrictions. Lemke confirmed that twenty to thirty percent of the job is lifting and moving boxes that weigh more than 30 lbs, which is the weight limit for the Complainant to lift. Lemke discussed the return trucks as being of concern, and wondered if it is reasonable to expect other employees to help remove items and complete the unloading and the restocking of returned items that often weigh more the 30 lbs.

Thompson asked why the Complainant did not apply for any of the other positions. Lemke replied that the Complainant said he was told by several other employees that it was not necessary to apply for the position since he was essentially performing the job. Lemke stated that she did not find any evidence of these conversations occurring. Thompson questioned if it was employees or managers that told him that. Lemke said it was a manager from the previous company. Rodriguez pointed out that the Complainant had seen others assigned without applying to other jobs and thought it was reasonable for the Complainant to make that assumption.

Hearing no further discussion, Rodriguez asked for the roll call. Voting "aye" was: Shobe, and Thompson. Voting 'nay' was Oldfield, Olson, and Rodriguez. Motion for a finding of **No Reasonable Cause** failed.

Rodriguez asked if the Respondent had failed to provide a reasonable accommodation would that only qualify for the first claim. Lemke replied that it could apply to both the first and second claims. Rodriguez asked if it would also apply to the retaliation claim. Lemke said that it would.

A motion was made by Rodriguez and seconded by Olson to recommend a finding of **Reasonable Cause**.

Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, and Rodriguez. Voting 'nay' was Shobe and Thompson. Motion for a finding of **Reasonable Cause** on all claims passed.

**LCHR #12-0905-042-E-R**

A motion was made by Olson and seconded by Shobe to recommend a finding of **No Reasonable Cause**.

Shobe questioned the discrepancy in how the Complainant could report to work at 3pm, when he was called to come to work at 3pm. According to the payroll, he was there at 3pm. Lemke replied

that reporting for payroll was on an honor system and the Complainant must have recorded that he was there at 3pm. Lemke also replied that the schedule was a bit of a mess and a lot of employees were found to not accurately report their hours. Olson questioned if it was a self reporting system and Lemke relayed that it was online, but entered entirely by the employee.

Rodriguez asked about the company's progressive discipline policy. Lemke said that they did have a progressive discipline policy and it was not followed with the Complainant, but there was no evidence to clearly show this was based on any discriminatory reason.

Rodriguez questioned if there was any connection to race for this Complainant's claim of termination. Lemke replied that none was found. Olson questioned if the Complainant was written up for violating the restriction of not working alone with consumers and if anyone else had been written up for this. Lemke said the Complainant was not written up and she replied that it was a unique restriction that applied only to the Complainant at this house and under this supervisor. Rodriguez wondered about the Complainant locking the door and falling asleep. Lemke said the Complainant believed that they were allowed to sleep while the consumers were sleeping. Lemke said it is allowed during the overnight shift but this occurred during an earlier shift. Rodriguez stated and Lemke agreed that even though the Respondent's records were a bit disorganized that there did not seem to be any evidence of discrimination.

Hearing no further discussion, Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion for a finding of **No Reasonable Cause** passed.

#### **LCHR #12-1217-002-PA**

A motion was made by Shobe and seconded by Olson to recommend a finding of **No Reasonable Cause**.

Nichols clarified that the passenger in the Complainant's car was a Caucasian male. Shobe asked about the alleged argument between the Respondent and the Complainant and whether or not the Complainant offered to pay for the gas. Nichols responded he did not offer to go into the station and prepay. Rodriguez asked if customers could pump gas and pay inside afterwards. Nichols stated the pump that the Complainant wanted to use had that option, but the Respondent could not see the Complainant's license plate because he had flipped it down and inserted the fuel pump nozzle. The employee told the Complainant she could not see his plate number, but the Complainant refused to flip the plate back up so she could read it. Nichols noted that the versions of the events differed. Nichols said the Respondent doesn't have a way to call out to the pump to let the customer know that the plate cannot be seen, which requires the employee to have to step out of the door.

Rodriguez asked about the alleged discriminatory statement to which Nichols replied it was the Caucasian passenger who claimed it had been said. Rodriguez asked if there was any evidence that other employees were treating customers unfairly when the license plate was difficult to read.

Nichols replied “No”. Shobe asked if there is a beeping noise to let the Respondent know that the customer wants to pay inside. Nichols replied “Yes”.

Hearing no further discussion, Rodriguez asked for the roll call. Voting “aye” was: Oldfield, Olson, Shobe, and Thompson. Abstaining was Rodriguez. Motion for a finding of **No Reasonable Cause** passed.

#### **LCHR #12-1217-062-E-R**

A motion was made by Olson and seconded by Oldfield to recommend a finding of **No Reasonable Cause**.

Thompson excused himself due to a conflict of interest and left the Chambers.

Shobe asked about the 18 months between the final warning and the termination of the Complainant from the company. Nichols replied that she asked about the policy and that there is no roll off of warnings over any time period. Nichols said the Respondent based the termination on previous issues involving the Complainant. Olson said that the warning did specifically state that any subsequent incident could result in termination. Nichols said no other disciplinary warnings she reviewed used as strong of language as the Complainant’s final warning. Rodriguez asked if both employees who engaged in the altercation had received a warning while only the Complainant was terminated. Nichols replied that the final warning for the other employee was 3 years prior to this incident. Nichols said the Respondent explained that the Respondent had no progressive discipline policy and it treats each incident on a case by case basis.

Shobe asked if the other warnings showed any discrepancy in treatment based on the employee’s race. Nichols replied that there had been ongoing issues among four employees, which included the Complainant, and the Respondent issued all four the same final warning. The other three employees were Caucasian American. Nichols also said that it was hard to do a comparison as the Complainant was the only African American employee.

Hearing no further discussion, Thompson was called back to Chambers. Rodriguez asked for the roll call. Voting “aye” was: Oldfield, Olson, Rodriguez, and Shobe. Abstaining was Thompson. Motion for a finding of **No Reasonable Cause** passed.

#### **PRE-DETERMINATION SETTLEMENT AGREEMENTS:**

#### **LCHR #12-1227-030-H**

A motion was made by Oldfield and seconded by Rodriguez to accept the settlement agreement as presented. Hearing no discussion Rodriguez asked for the roll call. Voting “aye” was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion passed.

**LCHR #12-1227-031-H**

A motion was made by Oldfield and seconded by Rodriguez to accept the settlement agreement as presented. Hearing no discussion Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion passed.

**LCHR #13-0104-001-E**

A motion was made by Oldfield and seconded by Rodriguez to accept the settlement agreement as presented. Hearing no discussion Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion passed.

**ADMINISTRATIVE CLOSURES:**

**LCHR #12-1212-061-E-R**

A motion was made by Rodriguez and seconded by Oldfield to accept the administrative closure for Failure to Cooperate. Hearing no discussion, Rodriguez asked for the roll call. Voting "aye" was: Oldfield, Olson, Rodriguez, Shobe, and Thompson. Motion passed.

**OLD BUSINESS:**

Civil Rights Conference - Recap & Evaluations

Taylor-Riley said she reviewed all evaluations from the Civil Rights Conference. We received many positive comments and have some good suggestions for next year. Taylor-Riley asked the Commissioners relay any suggestions for potential speakers for next year's conference to her as we are beginning to plan for next year.

**NEW BUSINESS:**

Resignation of Wendy Francis

Taylor-Riley discussed the resignation of Wendy Francis from the LCHR Commission and that the Mayor's office has been notified. She asked that Commissioners bring forward any suggestions for candidates or direct them to the website and the online application for consideration.

Participation in Juneteenth, Saturday June 22nd

Roberts highlighted the Celebration for Juneteenth and requested all consider attending on Saturday June 22<sup>nd</sup>, from 11am to 5pm at the park next to the Malone Center. Roberts said we will have a

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booth at the event and will highlight employment opportunities and also our civil rights investigation function.

Next Meeting:

The next meeting will be Thursday, June 27, 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 4:55 p.m.