

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

THURSDAY, February 24, 2011
CITY COUNCIL CHAMBERS
555 S. 10TH STREET

The February 24, 2011 meeting of the Commission on Human Rights was called to order at 4 p.m. by Chairperson Wendy Francis.

ROLL CALL:

The roll call was called and documented as follows:

MEMBERS PRESENT:

Commissioners: Gene Crump, Hazell Rodriguez, Sue Oldfield, Jose Quintero, Takako Olson and Wendy Francis, Chairperson. Quorum present.

MEMBERS ABSENT:

Commissioners: Dick Noble, Mary Reece and Karla Cooper.

STAFF PRESENT:

Angela Lemke, Margie Nichols, Regina Grant, Loren Mestre-Roberts, Rod Confer, Jocelyn Golden, and Janice Folkner.

APPROVAL OF JANUARY 27, 2011 MINUTES:

A motion was made by Commissioner Crump and seconded by Commissioner Rodriguez to approve the minutes of the January 27, 2011 meeting as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting "aye" was: Commissioners Olson, Rodriguez, Oldfield and Crump. Abstaining was Commissioners Quintero and Francis. Motion carried.

APPROVAL OF FEBRUARY 24, 2011 AGENDA:

A motion was made by Commissioner Crump and seconded by Commissioner Rodriguez to approve the February 24, 2011 meeting agenda as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting “aye” was: Commissioners Rodriguez, Oldfield, Quintero, Crump, Olson and Francis. Motion carried.

CASE DISPOSITIONS:

LCHR No.: 10-0504-023-E-R

A motion for a finding of **No Reasonable Cause** on all allegations was made by Commissioner Crump and seconded by Commissioner Olson.

Discussion ensued. Commissioner Rodriguez inquired about the procedure for informing the employer of a doctor note. Investigator Lemke stated she felt the employer would be okay with just seeing the note, but the Respondent claimed they were never presented the note and did not have it within his medical records. Rodriguez questioned the constructive discharge allegation and whether the Complainant refused to request an accommodation. Lemke explained the Complainant did refuse to request an accommodation in writing and that the Respondent had suggested the Complainant apply for a different position. The Complainant was also told that even though there were no positions available at that time, he could request a leave of absence and possibly within a couple of weeks there could be an open position. The Complainant admitted to Lemke that he did not check the job board. Lemke stated she felt the Complainant did not make an effort to even meet the Respondent halfway in doing some of the things he’s obligated to do in this process.

Commissioner Francis inquired about the statement the Complainant indicated he signed stating he was able to perform the duties of his position with or without accommodation. Lemke replied she did see this signed statement but that it was several years after his hire and before any of these issues arose.

Voting “aye” on the motion for a finding of **No Reasonable Cause** was: Commissioners Oldfield, Quintero, Crump, Olson, Rodriguez and Francis. Motion carried.

LCHR No.: 10-0518-024-E-R

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

Discussion ensued. Commissioner Rodriguez asked about the most recent evaluation the Complainant had and that even though he had similar issues on prior evaluations, this was the first time after he complained that he received an unsatisfactory rating. Investigator Nichols explained that after speaking with the supervisor it was clear that she wanted her employees to succeed, so she did not grade very harshly when she did the previous evaluations. The supervisor went on to explain to Nichols that there was a new program implemented in 2009 to help supervisors perform evaluations more effectively. As a result of the new program, she gave the Complainant, as well

as one other employee, an unsatisfactory rating. Commissioner Rodriguez also questioned the excessive nature of his late attendances. The report showed one being five years ago and then a couple of late attendances in February, 2010. Nichols explained there actually were quite a few late attendance in between that time that he wasn't written up for in which he was only a couple of minutes late. The Respondent reported to Nichols that they were getting tired of it and wanted the Complainant to take more responsibility and had several discussions with him about this. Nichols questioned about writing the Complainant up after five years but it is very clear in the company policy these warnings never fall off. Nichols stated after reading through the Complainant's employee file, there was a chronic problem with him being late for work.

Hearing no further discussion, Chairperson Francis asked for the roll call. Voting "aye" for the motion of No Reasonable Cause was: Commissioners Quintero, Crump, Olson, Rodriguez, Oldfield and Francis. Motion carried.

LCHR No.: 10-0615-003-PA

Having a conflict of interest, Commissioner Francis stepped out of the Council Chambers while the case was discussed.

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

Discussion then ensued. Commissioner Rodriguez asked if there was a specific procedure followed in this situation. Lemke stated there is a written procedure that gives them the right to refuse service to anyone, listing some reasons such as threats, intimidation, etc. As far as a procedure that verifies the number of times there was a problem or someone witnessing a problem, there is no such procedure. The Respondent's position is that in this particular case was they were able to obtain two written statements from witnesses and took action based on that information. Rodriguez asked if there was any proof verifying that the Complainant was at this location. Lemke stated the Complainant was not able to prove that he was not there on that particular day. The Respondent reported to Lemke it is not unusual for the Complainant to behave in this way and there is evidence from other service agencies regarding his behavior.

Commissioner Francis returned for the vote.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting "aye" on No Reasonable Cause was: Commissioners Crump, Olson, Oldfield and Quintero . Abstaining was Commissioners Rodriguez and Francis. Motion carried.

LCHR No.: 10-0709-029-E-R (Split Recommendation)

A motion for a finding of **Reasonable Cause** that the Complainant was not hired on the basis of his race was made by Commissioner Crump and seconded by Commissioner Francis.

Discussion ensued. Commissioner Rodriguez asked whether the Respondent could explain why he hired the other employee versus the Complainant. Nichols stated it was very difficult to ascertain that information from the conversations with the Respondent. Commissioner Francis asked if there was any evidence that the Respondent had noted any health department issues on any other applicants. Nichols stated there was none on any of the applications she received. She explained that initially the Respondent acknowledged meeting the Complainant, but later denied meeting the Complainant. Rodriguez stated that the employee handbook states that the men have to have short hair, but it seems the Respondent was not following the company policy. Francis asked if it is unusual to find an employer who has the number of employees that they have and the racial breakdown is quite skewed. Nichols stated it does depend on the type of business and in this case the answer would be yes. Typically in this type of enterprise it is common to find more minorities employed, giving it a higher percentage of minorities than what was found at this company. Rodriguez asked if there were any problems on his resume that would give evidence that the Complainant was not qualified. Nichols replied there were none and that the Complainant had at least two years of experience in that type of position.

Hearing no further discussion, Chairperson Francis asked for the roll call. Voting “aye” on Reasonable Cause was: Commissioners Olson, Rodriguez, Oldfield, Quintero, Crump and Francis. Motion carried.

A motion for a finding of **No Reasonable Cause** that the Complainant was not hired on the basis of his sex was made by Commissioner Francis and seconded by Commissioner Crump.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting “aye” on No Reasonable Cause was: Commissioners Rodriguez, Oldfield, Quintero, Crump, Olson and Francis. Motion carried.

LCHR No.: 10-0812-036-E-R

A motion for a finding of **No Reasonable Cause** on all allegations was made by Commissioner Crump and seconded by Commissioner Olson.

Discussion ensued. Commissioner Rodriguez asked if there was any policy or procedure in place to make a complaint. Investigator Nichols stated there is not a written policy. Rodriguez stated that the Respondent needs to be sure the employees are aware that this was not acceptable behavior and also a procedure for the employees to acknowledge that they are receiving a warning. Commissioner Francis asked if the Complainant ever completed an application for the position at the front counter. Nichols said there was no evidence the Complainant had completed an application. In addition, he

could not tell her any of the questions that were on the application. She also stated that evidence suggested that the Complainant had an issue with the General Manager being so much younger than himself.

Hearing no further discussion Chairperson Francis asked for the roll call. Voting “aye” on No Reasonable Cause was: Commissioners Quintero, Crump, Olson, Rodriguez, Oldfield and Francis. Motion carried.

LCHR No.: 10-0923-046-E-R

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

Discussion ensued. Commissioner Rodriguez asked about the situation with the cell phone, it seemed the Respondent knew about it, but minimized it. Nichols stated that she wasn’t able to confirm what happened because she wasn’t able to locate the Complainant and the Respondent denied that the situation occurred the way the Complainant said. Rodriguez acknowledged that the Complainant had not helped her case by not providing the information the investigator needs. Commissioner Francis asked about any evidence that the cash drawers were short. Nichols stated all she had to go on was whatever the Respondent provided. The Complainant never brought that issue up at the initial intake.

Hearing no further discussion, Chairperson Francis asked for the roll call. Voting “aye” on No Reasonable Cause was: Commissioners Crump, Olson, Oldfield, Quintero, and Francis. Abstaining was Commissioner Rodriguez. Motion carried.

LCHR No.: 11-0203-009-E-R

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

Discussion ensued. Commissioner Rodriguez asked about the timing of the unsatisfactory rating. Nichols stated that the Complainant’s evaluations are done every July. Nichols stated that the problem was that the Complainant didn’t change his behaviors from the time he was hired in 2004 and there is substantial documentation of the problem. Nichols explained that the evaluations in the past were all marked with the same unsatisfactory issues, but not to the point of making the entire evaluation unsatisfactory. In 2009, the Respondent started using a template for scoring each employee which is completed by other supervisors, then compiled to create the overall scoring.

A motion to separate each No Reasonable Cause was made by Commissioner Rodriguez and seconded by Commissioner Oldfield. Voting “aye” was: Commissioners Olson, Rodriguez, Oldfield, Quintero, Crump, and Francis. Motion carried.

Hearing no further discussion, Chairperson Francis asked for the roll call for the finding of **No Reasonable Cause for different terms and conditions based on his race**. Voting “aye” was: Commissioners Rodriguez, Oldfield, Quintero, Crump, Olson and Francis. Motion carried.

Chairperson Francis asked for the roll call for the finding of **No Reasonable Cause based on retaliation**. Voting “aye” was: Commissioners Oldfield, Quintero, Crump, Olson and Francis. Abstaining was: Commissioner Rodriguez. Motion carried.

PRE-DETERMINATION SETTLEMENT AGREEMENTS:

LCHR NO.: 10-1214-026-H

Commissioner Rodriguez stated that she had a conflict with this case.

A motion was made by Commissioner Francis and seconded by Commissioner Olson to accept the pre-determination settlement agreement as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting “aye” was: Commissioners Quintero, Crump, Olson, Oldfield and Francis. Abstaining was Commissioner Rodriguez. Motion carried.

LCHR NO.: 10-1216-027-H

A motion was made by Commissioner Rodriguez and seconded by Commissioner Olson to accept the pre-determination settlement agreement as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting “aye” was: Commissioners Crump, Olson, Rodriguez, Oldfield, Quintero and Francis. Motion carried.

LCHR NO.: 11-0124-001-H

A motion was made by Commissioner Rodriguez and seconded by Commissioner Quintero to accept the pre-determination settlement agreement as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting “aye” was: Commissioners Olson, Rodriguez, Oldfield, Quintero, Crump and Francis. Motion carried.

SUCCESSFUL CONCILIATION:

LCHR NO.: 10-0312-009-E-R

A motion was made by Commissioner Quintero and seconded by Commissioner Rodriguez to accept the successful conciliation as presented.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting "aye" was: Commissioners Rodriguez, Oldfield, Quintero, Crump and Francis. Abstaining was Commissioner Olson. Motion carried.

ADMINISTRATIVE CLOSURES/WITHDRAWALS:

LCHR NO.: 11-0124-006-E-R

LCHR NO.: 11-0124-007-E-R

A motion was made by Commissioner Crump and seconded by Commissioner Olson to accept the administrative closures/withdrawals.

Hearing no discussion, Chairperson Francis asked for the roll call. Voting "aye" was: Commissioners Oldfield, Quintero, Crump, Olson, Rodriguez and Francis. Motion carried.

OLD BUSINESS:

A. Civil Rights Conference Update

Investigator Lemke stated if anyone needs more brochures, there were more available. There are 58 registrations at this time. Registration deadline is March 7th; encourage everyone to come. Rod Confer added that there will be CLE credit for attorneys and Lemke stated there will be CE for the realtors as well.

B. Human Rights Office Space

Rod Confer stated that everything has been approved. The contractor said they will be starting soon and there will not be any problem meeting the 90 day deadline. Hopefully some construction dust will be raised on the third floor very soon.

NEW BUSINESS:

A. Award Selections

Lemke reported there were three nominations, two for the Gerald Henderson Human Rights Award and one for the Fair Housing Award. Unfortunately, one of the nominees was not eligible, so there is one nominee for each award.

A vote was taken and all were in favor of presenting Larry Williams with the Fair Housing Award and Gerald Henderson Human Rights Award.

B. Annual Report

Nichols stated the annual report is normally due by February 1 of each year. Barring a few delays, the report will be complete soon. She added that a lot of the statistics were compiled by the interns working within Human Rights, which was a great help to putting the report together.

PUBLIC COMMENTS: None

Next Meeting: The next meeting will be held on Thursday, March 31, 2011 at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10th Street.

ADJOURNED: The meeting adjourned at 5:18 p.m.