

CITY OF LINCOLN, NEBRASKA
COMMISSION ON HUMAN RIGHTS MINUTES
January 30, 2014
CITY COUNCIL CHAMBERS, 555 S. 10TH STREET

The January 30, 2014, meeting of the Commission on Human Rights was called to order at 4:03 p.m. by Bennie Shobe, Chair.

ROLL CALL:

The roll call was called and documented as follows:

MEMBERS PRESENT:

Commissioners: Bennie Shobe (Chair), Sue Oldfield, Takako Olson, Mary Reece (Vice-Chair), Liz King, and Micheal Q. Thompson. Quorum present.

MEMBERS ABSENT:

None.

STAFF PRESENT:

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

APPROVAL OF DECEMBER 12, 2013 MINUTES:

A motion was made by Thompson and seconded by Olson to approve the minutes of the December 12, 2013 meeting. Shobe asked for the roll call. Voting "aye" was: Oldfield, Olson, Reece, Shobe, and Thompson. Abstaining was King. Motion carried.

APPROVAL OF JANUARY 30, 2014, AGENDA:

A motion was made by Reece and seconded by Thompson to approve the meeting agenda. Shobe asked for the roll call. Voting "aye" was: King, Oldfield, Olson, Reece, Shobe, and Thompson. Motion carried.

CASE DISPOSITIONS:

LCHR #13-0415-010-E-R

A motion was made by Olson and seconded by Thompson to recommend a finding of **No Reasonable Cause** on all issues.

Reece asked about the situation where a male employee was terminated after being arrested at the workplace. Lemke clarified that a male employee was arrested at the workplace but was not terminated. Reece asked if he was arrested for something outside of the workplace. Lemke said yes. Commissioners asked for clarification of how this can be a comparable. Lemke said the Complainant alleges that because the male employee was arrested at work it would be a comparable because it would look bad for the business and yet he wasn't fired and she was fired.

Lemke said that the Respondent was inconsistent in the reasons given for the Complainant's termination; however even if the Complainant was terminated because of her other occupation, Lemke does not believe that it equates to sex discrimination. Thompson asked about the video that showed the Complainant stealing and Lemke replied that she did not see the tape and it might not even still exist. Thompson asked about the property that the Complainant took home. Lemke explained that the Respondent contends it was the money she stole, but the Complainant alleges that it was a misunderstanding regarding glasses that a corporate trainer told her she could have. Thompson asked if males had been terminated for stealing money. Lemke said that it is undisputed that at least one male has been terminated for suspected theft.

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

LCHR #13-0606-019-E-R

A motion was made by Reece and seconded by King to recommend a finding of **No Reasonable Cause** on all issues.

Shobe questioned the witnesses who were not reachable. Lemke replied that since the writing of the report, one witness contacted her and verified that she witnessed the supervisor kick the Complainant and call her names related to her weight. The witness also alleges that she reported issues to the Respondent about the supervisor putting his hands on employees. Lemke said the evidence shows that the supervisor may be a bully but it doesn't show that it was due to gender. Lemke had an issue with the Complainant waiting until after being terminated before reporting the abuse to management. Olson confirmed that the Complainant was terminated for stealing merchandise which was confirmed on Company surveillance video.

Reece asked why the Respondent did not immediately fire the Complainant after the first incidence of stealing. Lemke replied that the Complainant was given a second chance because the Respondent thought she may have just forgotten to pay for the items the first time.

Commissioners questioned why the Complainant did not report the abuse earlier. Lemke said the Complainant thought that she would lose her job if she reported it to management. Lemke also added that the Complainant refused to put her complaint in writing to the Respondent because she felt it would be more closely scrutinized.

Thompson asked Lemke to explain “casual” investigation. Lemke said that the investigation involved asking employees general questions about the work environment and not asking pointed questions about how the supervisor treated employees. Olson asked about the quality of the Complainant’s work. Lemke replied that there were never any allegations about the Complainant’s work performance with the exception of the reason she was terminated.

Hearing no further discussion, Shobe asked for the roll call. Voting “aye” was: King, Oldfield, Olson, Reece, Shobe, and Thompson. Motion carried.

LCHR #13-0703-021-E-R

A motion was made by Oldfield and seconded by Reece to recommend a finding of **Reasonable Cause** on the issue of termination based on disability.

Olson asked about the Respondent’s quote: “it was time for him to retire” and she questioned the use of the word retire. Nichols explained that with an age discrimination claim, the Supreme Court ruled that age has to be the “but for” or only reason for the termination. Nichols explained that even though the Respondent made the age-related statement, it appeared to her that most of the documentation led toward the Complainant being terminated due to disability. It was pointed out that the Complainant was hired at the age of 66 and retained employment until age 74, which would appear to disprove the age discrimination claim.

The Commissioners questioned how the yearly physical requirement tied into the multiple-year CDL license. There was discussion about different types of CDL licenses and why the yearly or bi-yearly physicals are required.

Discussion continued about the description of the job performed by the Complainant. Thompson questioned if the Respondent could be asked to create an employee’s handbook to have clearer requirements of the job. Nichols expressed doubt that the Respondent would be willing to create a handbook or job descriptions.

Hearing no further discussion, Shobe asked for the roll call. Voting “aye” was: King, Oldfield, Olson, Reece, Shobe, and Thompson. Motion carried for **Reasonable Cause**.

A motion was made by Oldfield and seconded by Thompson to recommend a finding of **No Reasonable Cause** on the issue of termination based on age.

Olson questioned the word “retire” being used and how that applied to the issue of age. Nichols replied that it implied that age played a part in the termination, but again, was not “but for” or the only reason he was terminated.

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

PRE-DETERMINATION SETTLEMENT AGREEMENTS:

LCHR #13-0723-024-E

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

LCHR #13-1031-012-H

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

LCHR #13-1226-016-H

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

LCHR #13-1101-034-E-R

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

SUCCESSFUL CONCILIATION:

LCHR #13-0416-011-E-R

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

ADMINISTRATIVE CLOSURES:

LCHR #13-1105-013-H

A motion was made by Thompson and seconded by Oldfield to accept the Administrative Closure of Withdrawal as presented. Hearing no discussion, Shobe asked for the roll call. Voting "aye" was: King, Oldfield, Olson, Reece, Shobe, and Thompson. Motion carried.

PUBLIC HEARING:

LCHR #13-0612-003-H

A motion was made by Reece and seconded by King to deny the Motion for a New Trial or Reconsideration.

Shobe asked for a clarification of this motion. Reece replied that the motion is premature since the final order had not yet been rendered. Taylor-Riley said that normally, after the final order is rendered, someone can ask for additional consideration before an appeal is filed. Discussion continued about if denial of this motion will keep someone from filing a new motion for a new trial or reconsideration.

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

LCHR #13-0612-003-H

A motion was made by Thompson and seconded by King to approve the Final Order.

Reece asked if the Commission can add to the Final Order. Taylor-Riley clarified that the Commissioners can add or change the Final Order and the draft order can be amended before a final signature by the Commission Chair.

There was discussion about the various items in the Final Order and explanation about the civil penalty versus the reward given directly to the Complainant. A civil penalty goes directly to the Lincoln Public Schools and is paid by the Respondent. There was discussion about how much to award the Complainant for "pain and suffering".

A motion was made by Thompson and seconded by King to amend the previous motion and award \$3,500.00 for pain and suffering to be paid by the Respondent to the Complainant. Olson asked if she can add more to the civil penalty in this motion and Taylor-Riley said the Commissioners might want to work with only one change at a time. Reece questioned if the \$3,500.00 amount had to be derived from a particular equation. Golden and Taylor-Riley clarified that it could be just a number they agree on and it could be specified as compensation for pain and suffering.

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

A motion was made by Olson and seconded by Thompson to increase the amount of the civil penalty on the Final Order from \$1,000.00 to \$2,000.00.

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

Hearing no further discussion, Shobe asked for a roll call on the approval of the amended Final Order. Voting "aye" was: King, Oldfield, Olson, Reece, Shobe, and Thompson. Motion carried.

OLD BUSINESS:

Award Nominations: Mestre-Roberts clarified for the Commissioners that they have two more weeks to get any more nominations submitted for the Gerald Henderson Human Rights Award and the Fair Housing Award. They will be voting on the award recipients at the February or March Commission Meeting.

NEW BUSINESS:

Taylor-Riley said they have been working on a Title 11 Revision and there will be proposed changes and amendments. She asked for any draft suggestions they might want to add.

Thompson asked that all future correspondence includes the middle initial Q. Shobe said he wanted to thank Commissioners Crump and Rodriquez for their service.

Next Meeting:

The next meeting will be Thursday, February 27, 2014, at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10th Street.

The meeting was adjourned at 5:08 p.m.