

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

Thursday, April 21, 2016  
City County Building, 555 S 10<sup>th</sup>, Room 303

**CALL TO ORDER:**

The April 21, 2016, meeting of the Commission on Human Rights was called to order at 4:05 p.m. by Bennie Shobe, Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Commissioners: Bennie Shobe (Chair), Elizabeth Kennedy-King (Vice-Chair), Amanda Baron, Susan Oldfield, Jon Rehm, and Melanie Ways. Quorum present.

**MEMBERS ABSENT:**

Commissioners: Micheal Q. Thompson.

**STAFF PRESENT:**

LCHR: Kimberley Taylor-Riley, Abigail Littrell, Francisca Beltran, and Peg Dillon.

**APPROVAL OF MARCH 31, 2016, MINUTES:**

A motion was made by Ways and seconded by Kennedy-King to approve the minutes of the previous meeting.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Kennedy-King, Baron, Oldfield, Rehm, and Ways. Abstaining was Chairperson Shobe. Motion carried.

**APPROVAL OF APRIL 21, 2016, AGENDA:**

A motion was made by Kennedy-King and seconded Baron to approve the meeting agenda.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, Rehm, and Ways. Motion carried.

**CASE DISPOSITIONS:**

**LCHR #15-1016-036-E**

Rehm recused himself and exited the room due to conflict of interest.

A motion was made by Kennedy-King and seconded by Baron to recommend a finding of **no reasonable cause** on the first allegation: Complainant subjected to different terms and conditions based on national origin.

Kennedy-King and Shobe agreed the evidence did not support a finding that Complainant was subjected to different terms and conditions of employment. However, there may be evidence Respondent refused to pay Complainant's wages based on her national origin.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, and Ways. Motion carried.

A motion was made by Kennedy-King and seconded by Baron to recommend a finding of **reasonable cause** on the allegation Respondent refused to pay Complainant's wages based on her national origin.

Kennedy-King asked why the Respondent withheld wage and tax information. Littrell said she asked for employees' names and evidence Respondent paid any employee as evidence that Respondent was paying any Hispanic employee wages. The Respondent did not provide any evidence. Littrell said the Respondent admits she did not pay the Complainant, but she asserted she was in an ongoing dispute with her co-employer and would not pay until that dispute is resolved.

There was further discussion about why the Respondent refused to pay Complainant's wages and whether she refused to pay due to the conflict with her co-employer or due to the Complainant's national origin. Taylor-Riley clarified the proper legal standard to consider when inferring discrimination.

Rehm returned to the meeting room.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Kennedy-King, Baron, Oldfield, and Ways. Voting no was Shobe. Abstaining was Rehm. Motion carried for **reasonable cause**.

A motion was made by Ways and seconded by Kennedy-King to amend the agenda to move the discussion of LCHR #15-1203-042-E to second on the list of case dispositions.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, Rehm and Ways. Motion carried.

**LCHR #15-1203-042-E**

Rehm recused himself and left the room due to conflict of interest.

A motion was made by Kennedy-King and seconded by Oldfield to recommend a finding of **no reasonable cause** on both counts.

Rehm returned to the meeting room.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, and Ways. Abstaining was Rehm. Motion carried.

**LCHR #15-1020-032-E-R**

Kennedy-King recused herself and left the room due to conflict of interest.

A motion was made by Oldfield and seconded by Baron to recommend a finding of **no reasonable cause**.

There was discussion about age and categorizing employees by age at this company. Rehm said even though the conduct at this company was juvenile, it did not rise to the level of a hostile environment. Littrell said the Respondent admitted that the office culture was unprofessional at times.

Kennedy-King returned to the meeting room.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Oldfield, Rehm, and Ways. Abstaining was Kennedy-King. Motion carried.

**LCHR #15-1120-041-E-R**

Shobe recused himself and left the room due to conflict of interest.

A motion was made by Rehm and seconded by Ways to recommend a finding of **no reasonable cause**.

Oldfield asked about when the Complainant asked for a reasonable accommodation and the nature of the accommodation sought. Littrell said the Respondent never agreed to allow 30 days for the Complainant to find an alternative treatment for his disability. When Respondent asked if he would stop taking illegal drugs the Complainant was noncommittal. The Respondent also asserted the Complainant lied when asked if he took illegal drugs.

Rehm asked if the Respondent followed their written policies regarding Complainant's infraction. Littrell replied Respondent's policy allows the Respondent to demand a drug test and discipline an employee if it has probable cause to believe the employee is violating Respondent's drug use policy. Discipline could include discharge. Kennedy-King asked if the Respondent was required to make a reasonable accommodation despite its drug use policy. Littrell advised that

permitting illegal drug use is never considered a reasonable accommodation. Baron said she thought the Complainant had disclosed to the Respondent his use of an illegal drug to treat his disability. Littrell said he disclosed his disability and his support of state legislation allowing the use of medical marijuana, but Complainant did not specifically divulge to the Respondent that he used marijuana.

Shobe returned to the meeting room.

Hearing no further discussion, Acting Chairperson Kennedy-King, asked for the roll call. Voting "aye" was: Kennedy-King, Baron, Oldfield, Rehm, and Ways. Abstaining was Shobe. Motion carried.

**LCHR #15-1204-043-E-R**

A motion was made by Kennedy-King and seconded by Baron to recommend a finding of **no reasonable cause** on the following allegations: the Respondent subjected Complainant to different terms and conditions of employment on the basis of age; Respondent subjected Complainant to different terms and conditions of employment on the basis of national origin; Respondent subjected Complainant to a hostile work environment on the basis of age; and Respondent subjected Complainant to a hostile work environment on the basis of national origin.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, Rehm, and Ways. Motion carried.

A motion was made by Kennedy-King and seconded by Oldfield to recommend a finding of **reasonable cause** on the following allegations: Respondent denied Complainant a promotion on the basis of age; Respondent denied Complainant a promotion on the basis of national origin; Respondent disciplined Complainant on the basis of age; Respondent disciplined Complainant on the basis of national origin; Respondent suspended Complainant on the basis of age; Respondent suspended Complainant on the basis of national origin; Respondent discharged Complainant on the basis of age; Respondent discharged Complainant on the basis of national origin; and Respondent retaliated against Complainant for alleging he was subjected to discriminatory treatment.

Rehm said there were similar individuals with the same national origin that were also unhappy with management and there was not sufficient evidence Respondent's conduct was discriminatory. Kennedy-King said Complainant's supervisor reported that the workers were unhappy but the supervisor was unable to provide evidence the workers complained about Complainant. The supervisor was most concerned about the workers but Kennedy-King cited examples of inconsistencies in the manager's explanations for taking adverse employment action against the Complainant. Littrell explained that she received conflicting information about the role of Human Resource employees in the determination to suspend the Complainant. Respondent Supervisor also provided conflicting explanations for why Complainant was suspended.

There was discussion about Complainant's qualifications for promotion. Littrell said the Respondent asserted Complainant was not promoted because he did not have good computer skills. Shobe asked if the question about retiring implies age discrimination.

Kennedy-King asked to discuss the allegations of discrimination based on national origin. Littrell said the Commission must determine whether there was enough evidence to support reasonable cause determinations on the allegations of discrimination based on age and/or national origin. The supervisor's comments about Complainant's intent to retire may be evidence of age discrimination. Littrell advised the Commission that they may consider Complainant's national origin in the larger pool of all employees or just within the pool of management staff.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, and Ways. Voting no was Rehm. Motion carried for **reasonable cause** on the following allegations: Respondent denied Complainant a promotion on the basis of age; Respondent denied Complainant a promotion on the basis of national origin; Respondent disciplined Complainant on the basis of age; Respondent disciplined Complainant on the basis of national origin; Respondent suspended Complainant on the basis of age; Respondent suspended Complainant on the basis of national origin; Respondent discharged Complainant on the basis of age; Respondent discharged Complainant on the basis of national origin; and Respondent retaliated against Complainant for alleging he was subjected to discriminatory treatment.

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

##### **LCHR #16-0310-008-E-R**

A motion was made by Kennedy-King and seconded by Ways to recommend approval of the pre-determination settlement agreement.

Hearing no discussion, Acting Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Kennedy-King, Baron, Oldfield, Rehm, and Ways. Motion carried.

#### **OLD BUSINESS:**

##### **2016 Civil rights Conference**

Beltran thanked commissioners for attending and promoting the Conference. There were 175 registered attendees for the Conference. There were many first time conference attendees and many provided very positive feedback on the survey provided at the end of the conference.

Shobe asked about other Conferences in the area and if there is competition for attendees. Taylor-Riley explained the LCHR Conference is unique to the region. Taylor-Riley explained conference funding and support and thanked the staff for all of their hard work to make this Conference a success.

There was discussion of the plenary sessions, specifically, the historical presentation by Mr. Ed Zimmer, which was very well received. Oldfield commented that there was a good balance maintained between technical guidance and practical information.

### **Outreach**

Shobe asked about the number of cases of discrimination that occur in relation to how many are actually reported. Taylor-Riley responded that many people do not report discrimination, but LCHR is working to increase its outreach efforts, specifically in the area of housing. There was further discussion about the small percentage of people that report discrimination and how to encourage individuals to assert their rights without fear of retaliation.

Beltran continues to work with American Job Center and Lincoln Public Schools. She will continue to attend community events. Beltran met with the Mayor to discuss outreach efforts to refugees in Lincoln.

### **Commissioner Appointments**

Taylor-Riley discussed the appointment of two new Commissioners to be sworn in at the next Commission meeting. Mr. Carlos Garcia was in the audience and was introduced to the Commissioners. Mr. Tom Beckius is also joining the Commission. Both will be appointed to a three year term pending approval by the City Council.

### **NEW BUSINESS:**

#### **Annual Report**

Taylor-Riley said the Annual Report will be completed by the May meeting.

#### **May Conference/Training**

Littrell will attend HUD training in Boston and Taylor-Riley will be attending the Annual NCREF Conference later in May in Williamsburg, Virginia.

### **PUBLIC COMMENT:**

No public comment.

The meeting was adjourned at 5:23 p.m.

### **Next Meeting:**

Thursday, May 26, 2016, at 4:00 p.m.  
555 S. 10<sup>th</sup> Street, 1<sup>st</sup> Floor, Council Chambers