

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

Thursday, August 25, 2016
555 S 10th Street, 1st Floor
City County Building, Council Chambers

CALL TO ORDER:

The August 25, 2016, meeting of the Commission on Human Rights was called to order at 4:00 p.m. by Commissioner Oldfield.

ROLL CALL:

The roll call was called and documented as follows.

MEMBERS PRESENT:

Commissioners: Amanda Baron, Tom Beckius, Carlos Garcia, Susan Oldfield, Jon Rehm, Micheal Q. Thompson, and Melanie Ways. Quorum was present.

MEMBERS ABSENT:

Commissioners: Bennie Shobe was absent.

STAFF PRESENT:

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

NEW BUSINESS:

Commissioner Kennedy-King

Taylor-Riley told the board that Commissioner Kennedy-King resigned her position on the board. Commissioners must be residents of Lincoln, Nebraska.

Elect New Vice-Chair

Commissioners Ways and Baron were nominated for Vice-Chair. Beckius moved to close nominations and Garcia seconded. Written votes were taken on the nominations. Commissioner Baron was elected as the Vice-Chair for the Lincoln Commission on Human Rights for the remainder of 2016.

APPROVAL OF JULY 28, 2016, MINUTES:

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

Hearing no discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

APPROVAL OF AUGUST 25, 2016, AGENDA:

A motion was made by Oldfield and seconded by Beckius to approve the meeting agenda.

Hearing no discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

CASE DISPOSITIONS:

LCHR #16-0318-010-E-R

A motion was made by Beckius and seconded by Thompson to recommend a finding of **no reasonable cause** on both allegations.

Ways commented that this case was difficult because the Respondent admitted she did not pay the Complainant. Littrell replied that the Respondent had paid Complainant before but later demanded a tax identification number from the Complainant before paying her any more wages. Ways asked if the Complainant is the only employee that could not supply an identification number. Littrell said that is disputed. Littrell interviewed a witness who said there were other employees that did not have tax IDs but were being paid. There was another white/American employee who also was not paid.

Garcia asked whether employers can pay employees that do not supply a tax ID. Littrell said the Commissioners should determine if the reason for the Respondent not paying the Complainant was actually because of Complainant's national origin and not for reasons proffered by the Respondent.

Rehm asked about the Respondent's alleged comment to Complainant: "I'm not paying you because you are illegal." Littrell stated that no one overheard Respondent's alleged comment, and Respondent denied making it. Littrell added that there was evidence Respondent was dishonest about other matters and there was no evidence Complainant was dishonest.

Commissioners discussed the Respondent's responses and whether they were pretextual. They also discussed whether Respondent's workers were employees or independent contractors. The Respondent submitted no written independent contracts.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Beckius. Voting no was Baron, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion failed for no reasonable cause on all counts.

LCHR #16-0318-010-E-R cont.

A motion was made by Oldfield and seconded by Thompson to recommend a finding of **reasonable cause** on both allegations.

The motion was withdrawn.

A motion was made by Ways and seconded by Rehm to recommend a finding of **reasonable cause** on the allegation Respondent refused to pay Complainant her wages based on her national origin.

Hearing no discussion, Vice-Chair Baron, asked for the roll call. Voting “aye” was: Baron, Garcia, Oldfield, Rehm, Thompson, and Ways. Voting no was Beckius. Motion carried for **reasonable cause**.

A motion was made by Rehm and seconded by Thompson to recommend a finding of **reasonable cause** on the allegation that Respondent subjected Complainant to different terms and conditions on the basis of national origin.

Rehm said that since the Commissioners found reasonable cause to believe that Respondent refused to pay wages to the Complainant on the basis of her national origin then they should also find reasonable cause that Complainant was subjected to different terms and conditions since pay is one term of employment.

Ways asked if there was a white person who was not paid. Littrell said there was one white employee who was not paid. Ways asked for Littrell to go over any reasons why there would be no reasonable cause on the basis of national origin. Littrell said there was some evidence Respondent treated some Hispanic employees favorably and other Caucasian employees unfavorably. This could be evidence that she treats her employees poorly or well regardless of national origin.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting “aye” was: Baron, Garcia, Oldfield, Rehm, and Ways. Voting no was Beckius and Thompson. Motion carried for **reasonable cause**.

LCHR #16-0526-024-E-R

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

Garcia asked if there was any additional contact with witnesses since the report was sent to the Commissioners. Littrell said there was not. Garcia asked whether Respondent encouraged or participated in workplace gossip about Complainant’s immigration status. Littrell said the Respondent admitted she told other employees she had called Immigration and Customs Enforcement with questions about Complainant’s immigration status. Commissioners discussed

the reasons for the Respondent contacting ICE and whether that is the appropriate organization to contact.

Littrell said the Complainant appeared genuinely frightened and distraught about the alleged threats of deportation, but Littrell could find no witnesses to Respondent's allegedly retaliatory comments. Complainant refused to provide the names of first-hand witnesses for fear of exposing them to deportation. There was further discussion about the Respondent contacting ICE. Commissioners questioned the length of time that she has been in business and her lack of knowledge of regulations about paying employees.

Rehm asked about terms and conditions of Complainant's employment and how the Respondents contacting ICE has affected the Complainant. Littrell said Complainant was concerned about job references and the ability to get employment in the future.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

LCHR #16-0330-013-E-R

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

Beckius asked about the Complainant's missing performance evaluation and whether any other employee was disciplined 29 times. Littrell said the evaluation was not provided and no other information on disciplinary actions had been furnished, except for employees that were discharged. Oldfield asked why there was no current evaluation available for Complainant. Littrell said this Human Resources person was new to the job within the last 6 months and the evaluation process had been changed several times.

Garcia asked about Respondent's overall diversity and plans to improve the diversity of its workforce. Littrell said she didn't observe any formal goals to diversify. They did have a policy to not discriminate. Colleagues that were interviewed said the Complainant's work caused substantial and frequent problems for co-workers and for customers.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

LCHR #16-0421-017-E

A motion was made by Oldfield and seconded by Rehm to recommend a finding of **no reasonable cause** on all allegations.

Garcia asked about the Respondent's lunch break policy and whether it was willing to allow Complainant an additional unpaid ten minutes at lunch. Nichols said no there was no problem with that accommodation.

Nichols told the Commissioners that the Complainant said that he was going through a difficult period and asked to withdraw the case, but it had already been submitted to Commissioners.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

LCHR #16-0422-018-E-R

A motion was made by Oldfield and seconded by Ways to recommend a finding of **no reasonable cause** on all allegations.

Rehm asked if the Complainant filed a work injury report. Nichols said yes. Rehm asked if the Complainant elected to see a chiropractor. Nichols said he first went to a chiropractor, then went to a physician, and then filed a workers compensation claim.

Rehm asked about whether a temporary disability qualified an employee for protection under the American's with Disabilities Act. There was further discussion about someone temporarily disabled and at what point Complainant was fully released back to work.

Garcia asked about the ticketing system. Nichols said the new system was similar to the old one and was just a replacement. Garcia asked about service complaints and if they were a problem before Complainant's injury. Nichols said the Respondent proposed that the kitchen manager was assisting the Complainant but when Complainant was left alone he began making mistakes.

Hearing no further discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

PRE-DETERMINATION SETTLEMENT:

LCHR #16-0802-032-E-R

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

Hearing no discussion, Vice-Chair Baron, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Oldfield, Rehm, Thompson, and Ways. Motion carried.

OLD BUSINESS:

Outreach

Beltran updated the Commissioners on her outreach activities: Collaborating with Latino Commission for Spanish Heritage Month. There will be an essay contest for Junior High, High School and College age students. They do not have to be Hispanic to participate. Beltran is working with Walt Library to promote Spanish Heritage Month. The Commission had a presence at the Back to School Jam at the Malone Center where 200-250 people participated.

Other events: Race Forum, OLLI (Osher Life Long Learning Institute), Fresh Start, and Karen Center.

Conference Planning & Award Nominations

Beltran updated the Commissioners on the 2017 Civil Rights Conference: The Request for Proposals has been drafted to allow for venues to submit bids for hosting the conference which will be in the later part of April 2017. The Gerald Henderson Award nomination forms will be forwarded to the Commissioners to help generate more nominations.

Travel

Taylor-Riley attended the IOAHRA, (International Association of Official Human Rights Agencies), conference in Philadelphia. LGBT issues were highlighted and many speakers addressed this at the conference. Taylor-Riley will ask one of the speakers to come to Lincoln to present at the Conference. There were discussions on Police/Community relations.

PUBLIC COMMENT:

No public comment.

The meeting was adjourned at 5:06 p.m.

Next Meeting:

Thursday, September 29, 2016, at 4:00 p.m.
555 S. 10th Street, 1st Floor, Council Chambers