

**MINUTES OF THE REGULAR MEETING OF THE
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
LEGISLATIVE OFFICE BUILDING – ROOM 1A
HARTFORD, CT 06106
WEDNESDAY, OCTOBER 10, 2012
2:00 P.M.**

COMMISSIONERS PRESENT

Andrew Norton, Chairperson
Edward Mambruno, Secretary
Suzanne Tirado
Dawn Niles
Tracey Gove
Cheryl Lynn Clarke
Lyn May

COMMISSIONERS ABSENT

Edith Pestana
Patricia Wrice

STAFF PRESENT

Robert J. Brothers, Jr., Executive Director
David Teed, Assistant Attorney General
Alvin K. Bingham, Supervisor, Affirmative Action/Contract Compliance
Valerie Kennedy, Human Rights & Opportunity Representative
Neva E. Vigezzi, Affirmative Action Program Analyst
Cheryl Sharp, Human Rights Attorney 3
Michelle Mount, HRO Referee
Marla Schiller, EEO Manager
Epifanio Carrasquillo, HRO Regional Manager
Heather Petit, Administrative Assistant

I. CHAIRPERSON

Chairperson Norton convened the Wednesday, October 10, 2012 regular monthly meeting of the Commission on Human Rights and Opportunities to order at 2:04 p.m.

II. SECRETARY

Secretary Mambruno requested a motion for the approval of the minutes of the Wednesday, September 12, 2012, Regular Commission Meeting. Commissioner Clarke noted that on page 7 of the minutes, Commissioner Lembo should be changed to Comptroller Lembo. A motion was made by Commissioner Gove to approve the minutes as amended which was seconded by Commissioner Niles. Commissioner Clarke abstained from the motion. The motion was approved. Chairperson Norton did not vote on the motion.

Executive Director, Robert Brothers, requested that the Commission amend the agenda to add Old Business regarding the Department of Education's Certificate of Noncompliance as item number VI and the agenda be renumbered accordingly. A motion was made by Commissioner Mambruno to amend the agenda which was seconded by Commissioner Gove. The motion passed unanimously. Chairperson Norton did not vote on the motion.

III. OUTREACH REPORT – Cheryl A. Sharp, Human Rights Attorney 3

Attorney Sharp stated that the agency is continuing to work on the documentary film focusing on civil rights in Connecticut. Attorney Sharp stated she was able to interview the Assistant Secretary of HUD, John Trasviña, who will be highlighted in the film. CHRO intern, Katie Dickey, came back to the agency to work on the film as well.

Attorney Sharp stated that several attorneys and investigators in the housing unit participated in "Stand Down" at which they provided information on housing discrimination and housing resources to veterans.

Attorney Sharp said that we will be applying for the new FHIP/FHAP Grant. The Business Training Institute and Speaker's Bureau continue to receive multiple requests for training for businesses and nonprofit organizations. Attorney Sharp stated that the Legal Division recently held training for Cromwell Middle School and have been invited back to train the entire Cromwell School District. The training would be for teachers and administrators regarding discriminatory bullying and how the agency plays a role in eliminating that type of bullying throughout the state. In addition, the Legal Division will be holding a training for teachers at WCSU as there has been an increased number of complaints in regard to schools and public accommodations.

Commissioner Norton asked if the agency receives many complaints from patients at CVH regarding race, gender, etc. Attorney Sharp stated that hospitals are places of public accommodation and the agency has received complaints from them; however, she cannot provide specifics due to confidentiality.

IV. GUEST SPEAKER – Michelle Mount, HRO Referee

Referee Mount stated she came to talk to the Commissioners in regard to a recent ruling she has made and also an issue that is on appeal in regard to the Whistleblower Retaliation (WBR) statute and the election of remedies. Referee Mount said that overall, the WBR statute allows individuals to come and be protected from state agencies, quasi-public agencies and certain large state

contractors. Referee Mount stated that in 2002, the statute was amended to allow WBR cases to take a different path. Referee Mount made a decision that the individual is allowed to go through the WBR process at the same time that they are going through the arbitration process. Referee Mount said that Respondents have argued that if a complainant has already filed a grievance they can't file a WBR compliant with the Office of Public Hearings and vice versa. Respondents are therefore filing Motions to Dismiss based on the fact that the employee has already filed a grievance. Referee Mount stated that in her ruling, she showed that the intent of the legislature was to add protection for these individuals, not cut off remedies. Referee Mount stated she found that they are not mutually exclusive. Referee Mount hopes that in the near future it will be decided in the Appellate or Supreme Court and they will be receiving less Motions to Dismiss.

Chairperson Norton asked Referee Mount if it is binding on her two colleagues when she makes a decision such as this. Referee Mount stated that they operate as Superior Court judges in that they might interpret law differently; however, up to this point there have been no disagreements. Chairperson Norton thanked Referee Mount for taking the time to come speak with them today.

V. AFFIRMATIVE ACTION RECOMMENDATIONS – VOTE REQUIRED

A. Staff Recommendations: *Approvals*

1. Western Connecticut State University
2. Eastern Connecticut State University

Chairperson Norton asked for a motion to accept staff recommendations for approval of two Affirmative Action Plans: Western Connecticut State University, and Eastern Connecticut State University which included the retention of their annual filing status. Such a motion was made by Commissioner May and seconded by Secretary Mambruno.

1. Western Connecticut State University

Representing the college were Dr. James W. Schmotter, President, Mr. Charles Spiridon, Associate Vice President of Human Resources and Carolyn Lanier, Associate Executive Assistant to the President and Chief Diversity Officer.

Alvin Bingham reported that the Western Connecticut State University's plan was recommended for approval based on compliance with the following: the plan contains all elements required; the agency has demonstrated every good faith

effort to achieve its goals; and the agency had no deficiencies in the prior plan review.

Commissioner Niles congratulated the university as they had previously been disapproved.

Dr. Schmotter thanked CHRO staff for helping the university turn around their plan.

2. Eastern Connecticut State University

Representing the agency were Dr. Elsa Nuñez, President, Dr. Stacey Close, Interim Associate Vice President for Equity and Diversity, and Mr. Jianguo Zhu, Coordinator of IRIS, HRIS and Affirmative Action.

Mr. Bingham reported that Eastern Connecticut State University's plan was recommended for approval based on compliance with the following: the plan contains all elements required; the agency has demonstrated every good faith effort to achieve its goals; and the agency had no deficiencies in the prior plan review.

Commissioner Niles congratulated the university on achieving approved plans year after year.

Chairperson Norton asked Commissioner May and Secretary Mambruno if they would agree to split the motion, which they did.

Chairperson Norton asked for a vote on the motion to approve Western Connecticut State University's plan and to retain its annual filing status. There was no discussion. The motion passed unanimously. Chairperson Norton did not vote.

Chairperson Norton asked for a vote on the motion to approve Eastern Connecticut State University's plan and to retain its annual filing status. There was some discussion. Commissioner Clarke asked about the results from their program, Project Compass.

Dr. Nuñez stated that Project Compass is a grant that the university received from the Nellie Mae Foundation that allows them to close the achievement gap. Dr. Nuñez stated that recently, Ed Trust collected data on 391 institutions throughout the country and ranked Eastern number one in closing the achievement gap. Commissioner May asked for an example of how they would work to close the gap. Dr. Nuñez stated that the grant allowed them to study the issue and not just apply a remedy. Dr. Nuñez said by studying the issue, the university was able to desegregate the data. They looked at variables that show

motivation, for example, going to library orientation. Dr. Nuñez reported that now if any student does not go to library orientation, that student is in jeopardy of not graduating. Dr. Nuñez stated that in short, they are interventions that are directed to certain students and not the student population as a whole.

Commissioner Tirado stated that she would not be voting based on her affiliation with the university. The motion passed unanimously with one recusal, Commissioner Tirado. Chairperson Norton did not vote.

B. Staff Recommendations: ***Disapprovals***

1. Department of Public Health

Chairperson Norton entertained a motion to accept staff recommendation for disapproval of the Department of Public Health's Affirmative Action Plan and that the motion include the retention of their annual filing status. A motion was made by Commissioner Gove and seconded by Commissioner Niles.

1. Department of Public Health

Representing the agency were Dr. Jewel Mullen, Commissioner, Lisa Davis, Deputy Commissioner, Katharine Lewis, Deputy Commissioner, Amanda Anduaga-Roberson, EEO Manager, Michael Carey, HR Administrator and Abigail Cotto, Secretary.

Mr. Bingham reported that the agency was recommended for disapproval based on non-compliance with the following: the workforce considered as a whole and by occupational category is not at parity with the relevant labor market area, the agency has not met all or substantially all of its program goals and has not demonstrated every good faith effort to achieve its goals.

Chairperson Norton asked Dr. Valerie Kennedy to further explain why the plan was recommended for disapproval.

Dr. Kennedy stated that the problem was that there were a number of goal candidates in the searches that were not hired, without adequate explanation. In the plan, the agency discussed the qualifications they had but did not discuss those they didn't have. Dr. Kennedy said it has to be stated that they were lacking the qualifications in order to demonstrate the good faith effort that is required. Dr. Kennedy stated the plan was not recommended for conditional approval because two elements must be met; 1) that all sections of the plan are submitted and 2) everything that was noted as deficient in the previous plan must have been corrected. In addition, they have to meet one of the three remaining conditions; 1) workforce is at parity or 2) they have had substantial goal

achievement or 3) they have demonstrated every good faith effort to achieve goals.

Commissioner Clarke asked to hear from the agency. Commissioner Mullen thanked the Commission for their recommendation and for the opportunity to request reconsideration. Commissioner Mullen stated that they devoted hard work to their hiring process. Commissioner Mullen commended Ms. Anduaga-Roberson's work as well. Commissioner Mullen stated that no matter what, she will stand behind her staffs' work and that they were trying to avoid documenting what was wrong with the candidate as had been recommended in the past.

Ms. Anduaga-Roberson stated that they worked with their managers and supervisors to dissuade them from filling in information where it was lacking and risk falsifying information. Ms. Anduaga-Roberson gave an example that they should not say someone did not have a particular qualification just because they sat at an interview and did not talk about that qualification. Instead, the agency told the managers and supervisors to write about what the candidates did discuss. Ms. Anduaga-Roberson stated that the plan includes a clear explanation of what the candidate provided but agreed that it did not state why a candidate was not selected because they ward against creating something that is not there to avoid potential lawsuits.

Commissioner Mullen stated the agency wanted to make sure the managers and supervisors were being objective and the senior HR staff worked with the managers and supervisors to ensure they have fair processes.

Commissioner Clarke stated she was still unclear as to why so many goal candidates were not hired and lacked explanation. Commissioner Clarke stated that the agency is worried that people might file suit; however, there may be individuals asking why they were not hired and it does not show why in their plan. Commissioner Clarke stated that the Commission has to have an explanation. Commissioner Clarke stated that the agency has to document why an individual was not selected and that they are not doing anyone a disservice by doing so.

Chairperson Norton stated that although there were numerous cases where it was not done right, there were also many cases in which it was. Chairperson Norton said that based on this it seems the tools for bridging the gap between what the Commission requires and what the agency sees as important are there. Chairperson Norton stated he would like to hear back if it's the agency's view that to describe why a goal candidate didn't get hired is in some cases too difficult or too risky concerning liability so it can be discussed, because then it creates an impasse.

Chairperson Norton asked for a vote on the motion to disapprove the Department of Public Health's affirmative action plan and to retain its annual filing status.

There was no further discussion. The motion passed unanimously. Chairperson Norton did not vote.

VI. OLD BUSINESS

- A. Withdrawal of the Certificate of Noncompliance for the Department of Education

Chairperson Norton stated that they have received a letter from Commissioner Stefan Pryor, Ms. Charlene Russell-Tucker and Mr. Levy Gillespie at the Department of Education and also from Dr. Valerie Kennedy in regard to a withdrawal of the Certificate of Noncompliance that the Department of Education was issued at the September 12, 2012 regular Commission Meeting.

Mr. Brothers stated that since that time, he has had communication with Dr. Kennedy regarding their plan as well as with Commissioner Pryor and it is his understanding that they have corrected everything deemed to be deficient. Mr. Brothers stated that it is his recommendation that the Commissioners lift the Certificate of Noncompliance.

Commissioner Pryor acknowledged that Dr. Kennedy has worked above and beyond to assist them in ensuring full compliance. Commissioner Pryor stated that Ms. Charlene Russell-Tucker also stepped up to work with Mr. Gillespie in assisting their affirmative action and personnel teams.

Commissioner Niles made a motion to remove the Department of Education's Certificate of Noncompliance. Commissioner Niles congratulated the agency. Commissioner May seconded the motion. The motion passed unanimously. Chairperson Norton did not vote.

VII. NEW BUSINESS

- A. Request for a Limited Blanket Exemption from Contract Compliance Requirements Concerning Certain Types of UConn Health Center (UCHC) contracts.

Mr. Brothers stated that the current request goes back to 2008 and the Commission has approved its extension requests previously. Mr. Brothers stated that what UCHC would be required to do is to report to the Commission any contracts that would have exercised the exemption. Mr. Brothers stated that it is worth noting that UCHC has been able to obtain almost 100% compliance. Mr. Brothers stated that it is his recommendation to extend it another year.

Chairperson Norton asked for a motion to approve the recommendation from Mr. Brothers to extend the blanket exemption for the UHC for another year until November 9, 2013. Such a motion was made by Commissioner Gove and seconded by Commissioner Clarke. There was no discussion. The motion passed unanimously. Chairperson Norton did not vote.

B. Request for Exemption from Contract Compliance Requirements Concerning a Contract between Office of the Treasurer and Office of the Attorney General with Reinhart Boerner Van Dueren s.c.

Mr. Brothers stated that in this particular case the Attorney General's office asked the Treasury Department to come before the Commission. Mr. Brothers reported that Connecticut has an agreement with a firm in Wisconsin to do a collection of profits and earned income outside of the United States; this particular contract is for Taiwan. Mr. Brothers stated this could result in \$70,000,000 in collection of fees.

Chairperson Norton asked for a motion to approve the recommendation from Mr. Brothers that the contract compliance exemption be granted in regard to the Attorney General's office and the Treasury Department's contract with Reinhart Boerner Van Dueren s.c. Such a motion was made by Secretary Mambruno. Commissioner Gove seconded. The motion passed unanimously. Chairperson Norton did not vote.

C. Declaratory Ruling on Respondent's Petitions to Preclude Awards for Emotional Distress Damages and Attorney's Fees in the matters of James Brule, Stephen Warner, Dawn Wynkoop, Bruce Sloman and Douglas Eitelman v. NERAC, Inc. and Kevin Bouley (CHRO Nos. 0840032, 0840031, 0840008, 0840243 and 0840162).

Mr. Brothers stated that a request for a declaratory ruling is essentially asking for a legal opinion. Mr. Brothers reported that there are several things that can be done; 1) grant, 2) deny or 3) set it down for specified proceedings. Mr. Brothers stated that in this particular case the Respondents came before the Commission and asked for the Declaratory Ruling. The Complainant then made a Motion to Intervene.

Mr. Brothers stated that if a case is already tracking through the Commission's Public Hearing process as it is in this situation the recommendation has always been to set it down for a specified proceeding; namely, to allow it to continue at Public Hearing. Mr. Brothers stated that it is not appropriate for the Commissioners to issue a declaratory ruling at this time. Mr. Brothers asked that the Commissioners 1) grant the Complainant's Motion to Intervene and 2) set it

down for a specified proceeding which would be to allow it to continue and be decided at Public Hearing.

Chairperson Norton asked for a motion to grant Complainant Dawn Wynkoop and Bruce Sloman's Motion to Intervene. Such a motion was made by Commissioner Niles. Commissioner Clarke seconded the motion. There was some discussion. Commissioner Clarke asked if NERAC stood for anything to which Respondent's attorney said it does not. The motion passed unanimously. Chairperson Norton did not vote.

Chairperson Norton asked for a motion to accept Mr. Brother's recommendation to set it down for a specified proceeding, namely, the Public Hearing. Secretary Mambruno made such a motion. Commissioner Clarke seconded.

At the request of Respondent's attorney, Chairperson Norton and the Commissioners agreed to allow them a moment to speak.

Attorney Geneva Bell stated that she is from Jackson Lewis and that their firm represents NERAC, Inc. and Kevin Bouley in five separate cases that are pending before CHRO at Public Hearing. Attorney Bell stated that the Respondents submitted a motion asking the Hearing Officer to declare as a matter of law that the Complainants are not entitled to receive or recover emotional distress damages or attorney's fees on their claims even if they prevail because the statutes under which CHRO practices does not specify age as a protected category. Attorney Bell referenced section 46a-58a.

Chairperson Norton called for a vote on the motion. There was no further discussion. The motion passed unanimously. Chairperson Norton did not vote.

VIII. DIVISION REPORTS

A. Executive Director's Report

Mr. Brothers stated that the agency is in the process of hiring two more investigators. Mr. Brothers said the agency would then have a total of four new HRO Representatives. Once the next two investigators are hired, the agency will be looking to establish a new list of candidates.

Mr. Brothers stated that the agency continues to work with the Department of Labor for administrative purposes and that they have been very accommodating. Mr. Brothers said that the Department of Labor has handled all of the agency's requests timely and efficiently.

Commissioner Gove asked Mr. Brothers if there has been any progress made in regard to obtaining more office space at the Central Office. Mr. Brothers stated

that the office space is very confining and he recently made a request to Douglas Moore at DPW for more space as the agency is running out of room for mediations, conferences, etc.

IX. EXECUTIVE SESSION

Chairperson Norton asked for a motion to go into Executive Session to discuss litigation as well as personnel matters and a reopening request. Chairperson Norton asked Mr. Brothers and David Teed to stay for the session. Such a motion was made by Commissioner May and seconded by Commissioner Gove. The motion was approved unanimously. Chairperson Norton did not vote.

X. RETURN TO REGULAR SESSION

At 4:15 p.m. the Commission returned to Regular Session from Executive Session. Chairperson Norton stated that Keyin Worth was also invited into Executive Session in regard to her reopening request. Chairperson Norton stated that no votes or actions were taken in Executive Session.

XI. VOTE ON EXECUTIVE SESSION ITEMS

(Requires a Vote by Commissioners on the Record)

Chairperson Norton asked for a motion to approve Mr. Brothers' recommendation that the reopening request for K.T. (Keyin) Worth v. Department of Transportation (CHRO Nos.1030041 and 0730247) be denied. Such a motion was made by Commissioner May. Commissioner Tirado seconded the motion. The motion passed unanimously. Chairperson Norton did not vote on the motion.

XII. ADJOURNMENT

There being no further business to come before the Commission, it was moved by Commissioner May and seconded by Commissioner Tirado to adjourn the meeting at 4:18 p.m. The motion carried unanimously. Chairperson Norton did not vote.