

JIM GIBBONS
Governor

LARRY J. MOSLEY
Director

DENNIS A. PEREA
Administrator



COMMISSIONERS
Dennis Shipley, Chair
Lee Plotkin
Aileen Martin
Nadia Jurani
Tiffany Young

Minutes

Of The Nevada Equal Rights Commissioners'

Meeting on March 18, 2009

I. Call to Order

Dennis Shipley, Chair, called the meeting to order at 1:32 p.m.

II. Roll Call and Confirmation of Quorum

Norma Delaney, Administrative Assistant III, called role and confirmed that a quorum was present.

Members present: Dennis Shipley, Chair; Lee Plotkin; Nadia Jurani; and Tiffany Young.

Staff Present: Dennis Perea, Administrator, Nevada Equal Rights Commission (NERC); Maureen Cole, Deputy Administrator (NERC); Rose Marie Reynolds, Deputy Attorney General (DAG); and Norma Delaney, Administrative Assistant III, NERC.

III. Verification of Posting

Norma Delaney verified that the agenda had been posted and that certificates of posting are on file.

IV. Introduction of Guests

Mr. Perea, Administrator, NERC, advised that there were none.

V. Discussion/Possible Action on the Approval of the September 9, 2008, November 7, 2008 and December 1, 2008 Meetings Minutes of the NERC Commissioners' Meetings

Lee Plotkin, Commissioner, advised of minor correction. Nadia Jurani, Commissioner, moved to approve the minutes. Mr. Plotkin seconded the motion and it carried unanimously.

VI. Administrator's Report

A. NERC Case Statistics

Mr. Perea referred to Tab 5 of the packet and advised that for the most part the NERC is holding ground; that pending inventory had declined during the past couple of months, but has started to increase back up again.

F. Personnel Issues – Staffing

Mr. Perea advised that with the pending inventory slowly increasing, that currently NERC is down two investigative positions and on March 11, 2009, Billie Bailey, Chief Compliance Investigator, retired.

Dennis Shipley, Chair, asked if NERC has received authorization to replace those employees who left, or if there is still a hiring freeze.

Mr. Perea advised that in regards to the two investigator positions, one is being held open on purpose as that position is going to be eliminated in 2010 and rather than bring somebody in, spend the time to train the person for six months and then have to let the person go, it was decided to leave that position open and use the salary savings for possible overtime as NERC nears the end of the federal contract. Mr. Perea advised that NERC is currently in the process of recruiting/filling the second position. He added that the Chief of Financial Management wanted NERC to realize the salary savings, especially with the size of the payment after the Chief Investigator left, and that the report he (Mr. Perea) received this week shows a fairly large projected balance which covers all NERC's cash shortages, and they are moving forward to fill that second position.

Mr. Perea advised that in regards to the Chief position, that both Maureen Cole, Deputy Administrator, NERC, and he had been discussing this matter and advised that if the housing bill passes, the housing program will have an investigator position and a supervisor position at a grade 34, the Chief position is a grade 35, and if NERC ends up with two independent programs, they (Ms. Cole and Mr. Perea) thought it may be better to go with two investigator/supervisor positions instead of having a Chief - in other words, having a supervisor for the employment program and another for the housing program, but that they have not settled on anything at this point.

Mr. Perea advised that the housing bill is built into the budget; that there is \$110,000 of income coming from HUD in the budget; that if the bill does not pass and does not come to fruition, the budget will be greatly decreased and it will affect how the Chief position and investigator position are filled

Mr. Perea added that Ms. Cole and he are trying to divide up the workload from the Chief position between themselves and that if NERC was going to

downsize it may be better to penalize the top than the investigative staff as they are the ones that are moving the work; that if NERC was to run out of money, it is better to lean at the top, not the bottom and not the investigators at this time.

C. Performance Indicators

Mr. Perea advised that NERC started a slight downward trend in February 2009; stated that in regards to Performance Indicator I, that he is happy with the numbers and that the trend will go back up, providing that staff remains healthy and at work for March.

D. NERC's Second Relocation

Mr. Perea advised that NERC had relocated in mid-February from the St. Louis location to the Grant Sawyer Building, which cost NERC about four business days.

B. Budget SFY 09; Budget Proposed for 2010-011 Biennium

Mr. Perea advised that in regards to the budget, there is an enhancement unit that adds \$2,000 per year for public hearings - the money has been set aside in the budget for NERC to conduct public hearings if AB43 is approved, where sexual orientation and sex would both be covered under Public Accommodation, NRS 651 and NRS 233, NERC. He added that at the time of the Commissioners' meeting, it was unclear if AB43 would be heard.

Mr. Shipley asked if the hearings would take place during the legislative session, where possibly legislators could be asked their opinion(s) in the matter.

Mr. Perea advised that it was noted in the newspaper that NERC has two cases pending, and he was interested to see if NERC could get some legislative intent during this session.

G. Legislative Updated

Mr. Perea advised that AB43 went to Commerce and Labor in the Assembly but that he stated did not know the opinion of the Committee Chair, Assemblyman Conklin, on it, but at this point it looks like it is dying in the Committee as they have gone past that bill number.

Mr. Perea added that there is a bill, SB207, which is seeking to include sexual orientation NRS 651; currently sexual orientation is included in NRS 233. He stated he went to the hearing and Senator Carlton, Chair, stated there was confusion about the intent of the bill, it was tabled, and was not even brought up for discussion; that it bothered him that this happened as it seemed like a fairly

innocuous piece of AB43 and was surprised it was not taken up and wished he knew what the backroom deal was on this.

Mr. Shipley commented that the draft of AB43 was an essential part of the proposal to get clarification on legislative intent.

Mr. Perea advised that NERC has sent correspondence to the Committee Manager explaining the inconsistencies and for clarification on legislative intent; stated he was in Carson City for budget hearings and Assembly Conklin asked why AB43 and the housing bill combined; that NERC tried to explain that they are not related – one was to get legislative intent and the other was to make NERC equivalent to the federal Fair Housing Act; stated Ms. Cole and he believed they were explaining it well enough but they are not getting any feedback as to why it is not being scheduled. Mr. Perea stated that this causes concern about the future of the housing bill with SB207 and AB43 not being discussed.

Mr. Plotkin asked if anyone was communicating with the ACLU on legislative issues as he knows they have regular conversations regarding legislation and is very involved in Carson City; stated he did not know if there were parallel tracks that keep track of what the other one is doing.

Mr. Perea advised that both Ms. Cole and he have had conversations with the ACLU and that when he talks to different sides, he has talked to individuals in the casino industry that did not have a problem with SB207 and thought that they would actually support the bill. He added that while the ACLU is in support of the bill, NERC considered sending an amendment to SB207 to get others fixed and was told that they would kill the bill so NERC left it; he added that NERC is looking for any clarity they could get at this point, so did not submit any amendments to SB207. Mr. Perea added that he did send an e-mail to Assemblyman Conklin regarding NERC's concerns about the legislature not taking up this issue.

Mr. Perea stated that in regards to AB166, NERC does not believe that it will go anywhere; it had an anti-bullying type legislation where physical characteristics is a protected class (gave the example of too tall/too short,) verbal abuse. He added that while NERC would probably agree with the intent of the bill, NERC would never be able to take that on with their resources. Mr. Perea advised that Labor Commissioner Panchek initially thought that the Labor Commission would be the enforcement agency and had asked for an organizational chart of NERC in case they needed to sidebar/deal with these types of complaints. Mr. Perea added it was discovered that NERC would be the enforcing agency but that NERC does not have the resources and would attach a fiscal note that asks for monetary help.

Mr. Plotkin, in referring to the pending legislation, asked Mr. Perea if he is the principle dealing with legislation on NERC's legislative interests, to which Mr. Perea responded he was in regards to NERC bills. Mr. Plotkin asked Mr. Perea if he was familiar with any DETR legislation that may be contrary or in conflict with NERC proposed legislation, to which Mr. Perea advised that the Governor only allowed four bills from DETR and NERC has two of them; that the other two did not deal with NERC issues.

Mr. Plotkin asked Mr. Perea if there is communication between him (Mr. Perea) at NERC and the Director of DETR about who is speaking for the department that NERC falls under; stated that if he is sounding cryptic it is only because last legislative session, before Mr. Perea and Mr. Mosley, it was learned from several legislators that DETR was trading off on NERC's issues. Mr. Perea stated that he does not have that feeling; that Director Mosley seems to be on page with both NERC bills; stated that it took Director Mosley's endorsement for NERC to put the bills forward to the Governor's office and to be put forward to the legislature; stated he does not see a conflict.

Mr. Perea stated that there are some bills put forward by other sponsors - mentioned SB184 - family, gender, trans-sexual; SB 207 and AB 166 which were just discussed. Mr. Perea added that NERC put their bills in an order that would not have a significant business impact on NERC, and that NERC was in favor of that legislation.

Ms. Cole advised that BDR 793 which became Assembly Joint Resolution 3, is the old equal rights amendment from the 1970's, and is an interesting twist after all these years.

Mr. Perea asked Ms. Cole to explain the bill that addresses denying damages to legal workers in the United States, not of this origin. Ms. Cole advised that while she did not recall the bill number, it would prohibit a court from awarding any punitive of damages to anyone other than a bona fide citizen of the United States for any matter. The bill allows compensatory damages, but not punitive damages. Mr. Perea advised that NERC submitted paperwork to their liaison stating that NERC does not think that is in keeping with federal EEO laws and would not support the bill.

Mr. Perea advised that included in the packet was a copy of the legislative audit; stated there were seven findings and that NERC accepted the findings; that compared to the audit in 2001, this was very simple; stated that in regards to supervisory case reviews, the audit period covered the brief time where there was no Administrator/Deputy Administrator - the whole story was not explained but suggestions by the auditor were already in place. Mr. Perea advised that the

EEOC billing caused the most consternation from the Financial Management Division, as NERC does not get a contract until half the contract period is over and that the Financial Management Division was billing for funds in the next fiscal year which, since the state works on a cash basis, is against the rule. He added that NERC can run out of cash and have cash problems if NERC raided in to the current and NERC's contract was adjusted - NERC accepted that finding.

Mr. Plotkin, referring back to legislative issues/bills, asked Mr. Perea if there was a way to keep up with the bills on a more regular basis other than the internet; stated he is aware a person can register on-line, but that if Mr. Perea could update the Commissioners regarding status/committee hearings, that some of the Commissioners deal regularly with legislators on a number of issues and could possibly be of assistance. Mr. Perea advised there is an individual in Carson City who actually watches the new legislation when it comes in and bills that could effect the Commission (gave example of the bill that would not offer punitive damages) and that this information could be sent to the Commissioners. Mr. Plotkin stated he would appreciate it because if it looks like something is not being addressed, they may be able to find out why.

Mr. Perea advised that NERC has some money in the travel budget if one of the Commissioners wanted to testify in-person. Mr. Shipley asked Mr. Plotkin if this was something he would be interested in doing, to which Mr. Plotkin indicated he would.

Mr. Plotkin stated that Mr. Perea indicated that there was \$2,000 in the budget for public hearings, and asked the expense of the public hearing that was held in November 2008 at the state building. Mr. Perea advised, not counting the per diem for the Commissioners, that the cost for the court reporter and transcripts was \$800 and could have been more if NERC would have had to provide any additional transcripts. Mr. Perea advised that in the future, instead of having one public hearing, he views it as scheduling a public hearing and queue them up so that there may be more than one in a sitting, possibly two times a year, but it may not be enough. Mr. Perea also indicated that the Commissioners may want to hear certain cases where employers are being obstinate to some degree, to which Mr. Plotkin agreed. Mr. Plotkin commented that this is what the Commission should be doing and if it was not in the budget before, it is great that it is now as there is a lot of discrimination from various elements effecting legislation that the Commission has a vested interest in; that there could be allies that are very persuasive in Carson City that the Commission may not be aware of and a public hearing is an ideal forum to bring those forces together.

E. NERC's Second Relocation

Mr. Perea advised that NERC relocated a second time; advised that the St.

Louis building is not considered a state building as it was purchased by the UI Trust Fund and is owned by ESD; that NERC was being allocated rather heavily to be at the building and when UI had to staff up to be able to handle the unemployment claims coming in and more space was needed, the likely agency to move was NERC. Mr. Perea advised that NERC was moved to the Grant Sawyer building; that it is a great facility; that it costs NERC a lot less. He added that the only problem at the Grant Sawyer building is that NERC does not have a conference room, but that there are meeting spaces available with state personnel/training rooms/various other conference rooms. Mr. Perea advised that NERC is actually renting more space than the Tropicana office, but that it is not very efficient and did not know if NERC will get money in the budget to build a conference room; that NERC can always use the St. Louis building conference rooms and/or space at the Grant Sawyer building.

Mr. Perea advised that as a side note under personnel issues, stated he met with EEOC and one new issue that came out of the meeting is that the EEOC Las Vegas office does not have training space and they have a small conference room - the agreement was that the EEOC will provide five different trainings; NERC can attend the training and also invite other state agencies, and that NERC will provide the space, which will save some training money. He added that he has spoken with Ronald Grogan, EEO Director at State Personnel, and they have discussed training where the cost is split between the two training budgets; that anywhere NERC can save money he is looking at it. Mr. Shipley commented that if the EEOC is going to do training at a DETR and/or NERC facility, it would be nice to have NERC's name attached to the training as well as the EEOC's so that it shows NERC is also providing training.

Mr. Perea advised that NERC seems to be providing a lot of community outreach training - on March 14, he attended the 7th Annual Women's Conference, there were two sessions and for those individuals who did not attend either session, there was a panel discussion; he has another on March 16; Ms. Cole will be providing outreach training for an HR group talking to employers on March 19 - stated that he does not know if the trend will last forever, he hopes so, but it is picking up.

Mr. Plotkin advised that public education has always been an element of the Commissioners' statutory dictate; that previously when NERC had provided public education, the Commissioners received an update - date, name of organization, number of people in attendance, issues discussed. Mr. Plotkin stated that while the Commissioners may meet only three/four times a year, there is more going on; that it was great to receive the NV Law Journal that was sent to the Commissioners and he appreciated it as he has lawyer friends who asked him

about the article and that if he was unaware of it, he would not have been able to respond with any degree of intelligence. Ms. Jurani added that if the Commissioners could also be advised of any upcoming training sessions, they could also refer individuals rather than after the fact; that she does attend the Asian Community meetings and she is asked about training. Mr. Shipley also commented that he would like the statistical report and a brief narrative, just to keep them apprised of what is going on; that it is somewhat embarrassing when someone from the public asks something about NERC and they are unaware.

VII. Housing Bill Update (BDR 1169)

Ms. Cole advised that NERC is waiting for BDR 1169 to come out with a bill number to become public knowledge and be distributed; stated that NERC received confirmation from HUD in mid-January that if the bill comes out substantially like NERC's last draft, HUD would be satisfied and give NERC interim certification as a substantially equivalent state; there are still some residual concerns about the ability of NERC to handle housing complaints; that Mr. Perea and she have been meeting with individuals, speaking via telephone to talk through some of those concerns and provide the best information possible without lobbying for the bill. She added that NERC is in a holding pattern waiting for the bill number to come out and that hopefully NERC will get a hearing in the Committee(s) and be able to move forward. Ms. Cole advised that the federal Fair Housing Act allows the administrative hearings officer to levy rather significant fines when they find that a violation of the housing law has occurred. She added that the maximum amount is for multiple violations over a period of time - there are lesser caps for the first/second violation within a specified period of time of \$17,000/\$35,000 and up to \$65,000.

Ms. Cole stated that the matter would be decided in a public (administrative) hearing, that the Commission could either designate a hearing's officer (one of the Commissioners) or another person to be designated as a hearing's officer or they could decide to hear the case as a panel similar to that which was held in the November 2008 public hearing. She added that once a probable cause finding has been approved, either party has the option of proceeding on the administrative level or going into state court. She advised that the Complainant would be the Commission acting on behalf of the Charging Party - it would be the Charging Party's evidence/issues that would be heard; same as the hearing in November 2008.

Ms. Jurani asked what the advantage is for a party to go through NERC when they can go through state court - is it for purposes of making it quick going through NERC or is it simpler to go into court. Ms. Cole stated that she believes it is a matter of the timing of the case; that the administrative process generally moves more quickly than the court process.

Mr. Perea commented that in the federal Fair Housing Act, a case can be brought against a landlord without a Charging Party; there was some confusion about where the federal Fair Housing agencies actually do testing, send out testers to determine whether there is a discriminatory act, and that Ms. Cole and he are trying to figure out whether or not NERC can actually bring a case without a Charging Party, possibly where the agency becomes the Charging Party.

Ms. Cole advised that as in employment cases, if the Commissioners find a situation that merits investigation and probable cause is found, further action sanctions, as currently in the employment side, they would also have that authority on the housing side.

Mr. Shipley referenced Tab 8, and stated where the comparison is under current/proposed, he is curious as to why the proposed section in NRS 233 does not include age; that age is supposed to be in NRS 651 and it is not there either. Ms. Cole advised that in the area of public accommodation, NERC is trying to provoke clarification by the legislature; that if they ask NERC to enforce the age portion in public accommodation, NERC can attempt to do that; NERC's thinking is that if age continues to be a protected class in the area of public accommodation, then someone could say it is unfair to provide senior and/or children's discounts or to provide age minimums in areas such as gambling/drinking/smoking where there are other statutes currently enforced with regards to those age limits; that there are other kinds of age limits such as no one under 18 admitted without an adult - NERC thinks it would provoke a lot of complaints along those lines. Mr. Shipley stated that it makes sense to leave it out in order to protect senior/children discounts.

Ms. Cole advised that she tried to break down what the protected classes are currently and what the proposed is; that NERC wanted to bring NRS 233 and 651 into conformance/agreement under AB43; NERC also wanted to bring NRS 233 and 118 on the housing side into conformance; and bring NRS 613 and 233 into conformance, with the understanding that there are legitimate reasons for having different protected classes in each one of those areas. She added that NERC is also trying to use consistent language - that in NRS 233 in the employment area, ancestry/religious creed are terms that are not much used in a national sense anymore; that national origin includes ancestry and has been defined as such; religious creed is usually brought in under the heading of religion; added that using the more commonly used terms seem to provide better clarification and clarity.

Mr. Perea stated that there was concern during the budget hearing when Assemblyman Conklin, who was the Chair in that Committee, looked pained by AB43 to some degree and why it was not being mixed with the housing bill;

NERC was uncomfortable as to whether it would be heard as they are now scheduled past that bill number, but believes it will be discussed.

There was open discussion between the Commissioners, Rose Marie Reynolds, Deputy Attorney General (DAG) as to Mr. Plotkin acting as a liaison for the Commission and/or a private citizen and relaying information to Mr. Perea regarding legislative issues; Mr. Perea contacting the Chair to advise of issues/possibly scheduling meeting; open meeting rules; serial communication; whether items would need to be listed on agenda for action item; scheduling meetings quarterly versus weekly to provide updated information regarding legislation where Commissioners may be able to discuss upcoming legislation items where they may be able help/lobby for Commission; what is the protocol regarding lobbying.

Ms. Cole advised that the Commissioners may want to consider joining in the personal bill tracking service that the legislative bureau provides; you list the bill numbers you are interested in and they send an e-mail every time something is scheduled regarding that bill; she stated that you can track up to 10 bills without charge and it would cover most of NERC's issues; this would keep Commissioners apprised on a minute to minute basis, as things change sometime day to day. Mr. Perea advised that either Ms. Cole or he would send the link to the Commissioners.

Mr. Perea advised that at a prior meeting, the Commissioners voted and gave NERC an endorsement on the two NERC bills, whether they are for or against NERC moving forward with the bills, specifically AB43 and he feels that based upon the vote, he feels he can feed information back to the Commissioners.

Ms. Cole advised that she too recalls a vote in favor of the housing bill and also believed there was a vote in favor of AB43; that possibly prior minutes should be reviewed for the vote. She stated that if the Commissioners have already gone on record with an agenda item as being in favor of passage of those measures, it would prove that updates could be provided when hearings are going to be scheduled.

There was more open discussion regarding information being passed from Mr. Plotkin to Mr. Perea, to the Commissioners; communication that could prompt the Commission to take action or deliberate on an issue not scheduled following open meeting law versus no action being taken; sending Mr. Perea information that he would forward to the other Commissioners to take action, this needs to be under the open meeting law.

Final decision regarding the passing of information: if Mr. Plotkin talks with a legislator and gets information, Mr. Plotkin can pass that information to Mr. Perea; it would not be inappropriate for Mr. Perea to contact the Chair, Mr. Shipley, and advise he has received information from Mr. Plotkin and suggest a meeting be scheduled; should Mr. Perea have information, other than that obtained from Mr. Plotkin, that he wants to advise the Commissioners, Mr. Perea can contact Mr. Shipley and ask for a special meeting. Ms. Reynolds advised that would be fine; notice needs to be three full working days and the meeting could be held either in-person or telephone conference.

VIII. Public Comment

Mr. Plotkin stated that in regards to the Performance Indicator spreadsheet, he appreciates it as it is clear and east to see/understandable.

Mr. Perea advised that there was an additional Performance Indicator that he submitted with the budget as an addition to the ones on the spreadsheet, and that is the per cent of federal contract met; stated he believes that is probably more important from a business aspect as it has great importance to the organization as a growing concern and that it be added to the spreadsheet.

IX. Schedule Next Meeting (location/time) and Agenda Items

Open discussion about the next meeting location/date; public interest in Northern Nevada/Southern Nevada; convenience; cost; meeting in Reno as possibly legislators could possibly appear and/or lobby day.

Mr. Shipley advised that the next regularly scheduled meeting should be in mid-June, and asked that Ms. Delaney contact the members for dates/times.

X. Adjournment

Mr. Shipley adjourned the meeting at 2:46 p.m.

Respectfully submitted

Lee Plotkin,
Secretary/Commissioner

Date