

JIM GIBBONS
Governor

LARRY J. MOSLEY
Director

DENNIS A. PEREA
Administrator



COMMISSIONERS
Dennis Shipley, Chair
Lee Plotkin
Scott Youngs
Nadia Jurani
Tiffany Young

D R A F T

Minutes

of The Nevada Equal. Rights Commissioners'

Meeting on October 21, 2009

I. Call to Order

Dennis Shipley, Chair, called the meeting to order at 1:00 p.m.

II. Roll Call and Confirmation of Quorum

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

Members present: Dennis Shipley, Chair; Nadia Jurani; Tiffany Young, Scott Youngs; and Lee Plotkin (via telephone).

Staff Present: Dennis Perea, Administrator, Nevada Equal Rights Commission (NERC); Maureen Cole, Deputy Administrator (NERC); Rose Marie Reynolds, Deputy Attorney General (DAG); Dennis Maginot, Compliance Investigator II (NERC); Michael Hedrick, Compliance Investigator II (NERC); Joyce Martinez, Administrative Assistant III (NERC); 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 Scott Youngs, Commissioner

Mr. Shipley referred to Mr. Perea to introduce the newest Commissioner, Scott Youngs.

V. Introduction of Guests

Mr. Perea advised that he just recently met Mr. Youngs and asked that Mr. Youngs provide the members some background information about himself.

Mr. Youngs advised that he has been in Nevada for several years; that he grew up in a small town in Northern New York, not upstate New York, and decided to come out west for recreation; that he is an avid wheelchair athlete; stated that in his field there was not much going on and through contact with people, they advised that there was a lot going on so he relocated. He got his start at the Center for Independent Living. In 1994, the NV Center for Life Excellence & Development Disabilities received a federal grant to do training and education on the Americans with Disabilities Act (ADA) and he was hired to be the project coordinator and had been there for 15 years. In September 2008, he took over an Assistive Technology Project where they had agreements with the Bureau of Vocational Rehabilitation to do assessments for Voc Rehab clients and they do independent living assessments so that if people need things regarding assisted technology, assessments are completed for that as well; stated that part of the project also is an Assistive Technology Resource Center where there are over 350 different types of assistive technology devices that are loaned out to individuals with disabilities whether the devices are used for work or be independent in the community.

Mr. Youngs advised that the Center for Excellence & Developmental Disabilities is funded by the administration on Developmental Disabilities and is a sister agency of the NV Disability & Advocacy Law Center and the Developmental Disabilities Planning Counsel; that at any particular time, there about 10-15 different staff and professionals who do early childhood education and training, all the way through youth transition and even into some aging issues; that they are a grant funded office doing a lot of different disability related issues; concluded by adding he is happy to be on the Commission.

Mr. Shipley commented that the work Mr. Youngs does sounds very noble and the Commission looks forward to his insight on issues as they are discussed and welcomed him to the Commission.

VI. Discussion/Possible Action on the Approval of the Minutes of the March 18, 2009; April 1, 2009; and April 8, 2009 Meetings of the Commission.

Ms. Jurani made the motion to approve the minutes; seconded by Ms. Young; motion carried unanimously.

VII. Administrator's Report

A. Budget State Fiscal Year 2010

B. Federal Fiscal Year (FFY) 2009 Equal Employment Opportunity Commission Contract; FFY 10 Contract Outlook

D. Personnel Issues - Staffing

Mr. Perea advised that with the start of State Fiscal Year 2010 (SFY), NERC is still claiming poverty; that NERC has received guidance from the Equal Employment Opportunity Commission (EEOC) that NERC can expect a 20% reduction in the EEOC contract for 2010 – that this happened for 2009 also – coupled with state cuts and furloughs, with no additional funding, NERC's case age is holding ground. He added that NERC lost ground in some of the performance indicators; that there has been a bill debated last week in Washington, D.C., to add 4 million dollars back to the states – that this has been taken away; that they removed 7 million out of a possible 33 million over the last eight years and were trying to restore 4 million of it – stated he has not heard how this has turned out at this point.

Mr. Shipley asked if there were any provisions should NERC run out of money and if there was no money, would that mean closing down the agency? Mr. Perea responded that he does not know what the process is and at a certain point if there is no more money and you cannot get an emergency meeting with the Interim Finance Committee (IFC), pink slips may have to be issued, which he advised had been discussed at least once in past to save money.

Mr. Perea advised that NERC is about \$130,000.00 short in 2010 and that NERC will be drawing down the federal money sooner than in the past due to an audit finding, which is another issue along with staffing issues. Mr. Perea added that when too much federal money is drawn, it means less money for next year; that NERC is trying not fill any positions – NERC currently has two investigative positions open and one will be filled; that the Chief position is being left open as it is more “bang for the buck” which means more work for Ms. Cole and himself, but the position has to be left open to get as close to 0 as possible. He added that Tab 5 shows there is a \$17,00.00 projected shortfall after leaving all the positions open; that it is not a good scenario, but that NERC is making it work.

Mr. Shipley asked Mr. Perea if he is optimistic, to which Mr. Perea responded that he believes NERC will take a 20% cut for 2010; that NERC's calculation was very favorable - NERC closed approximately 932 cases in Federal Fiscal Year 2009 (FFY) and the contract was for 600; that

the next contact is based off the calculation and 20% will be about 170 cases higher than it was the previous year unless for some reason they cut NERC again.

Mr. Perea stated that it was not realized that EEOC was going to cut additional monies until June 1, 2009; that had NERC drawn down the money the way it is supposed to under the law, drawing down federal money first, NERC would not have had enough time to actually adjust the budget and stay operating; that when Ms. Cole and he attended the EEOC/FEPA Training Seminar in Maryland, there were 4 FEPA's (Fair Employment Practicing Agency) that had closed and 1 while they were at the seminar; that that most state fiscal years end on June 30; stated he has heard nice rumblings that EEOC will be providing the contract sooner, but he is not holding his breath.

Ms. Young asked Mr. Perea how does that or does it effect the Work Sharing Agreement NERC has with the EEOC? Mr. Perea advised that NERC is currently in FFY 2010 and does not have a contract – that NERC operates on a continuation of sorts; EEOC will divide up the money based on performance across 50 states and if that may or may not include the 20% cut.

Mr. Shipley commented that NERC is in a “catch 22” – if NERC satisfies the fiduciary obligations, it will be at the expense of timely and efficient administration of charges, which has been a goal NERC has been working of for years, to get to the level NERC is currently at, and it would be a shame to go back to where it was.

Mr. Perea indicated that Tab 6 is the legislative approved Performance Indicators; the first indicator took a serious beating and went from a high of 61% to a low of 2%; that with the influx of cases coming in, NERC does **not** (emphasis added) have the capacity to keep within the 22 days (time from complaint filed to formalized charge); added that the only good thing about the scenario is that the case age has been fairly consistent and is slightly better in the current year, 2010; that while NERC may be slower in the front end, NERC is investigating cases with an average case age of 177 days on no probable cause cases, and that NERC is still holding the inventory case age of about 213 days. He added that NERC is used to seeing anywhere from 80 to 100 charges in the inventory to be framed for investigation, NERC is at 270; that changes have been made to make the process quicker – Ms. Cole is framing a lot of charges and he is framing charges on the weekend; that while they are not making a dent in the backlog of intakes waiting to be formalized as good as they were hoping to make, the answer is yes – as NERC cannot fill positions and more work

comes through the doors it is countercyclical – this is when the cases come through.

Mr. Shipley stated that this was the primary target of criticism of the public in the past, the untimely processing of claims and in getting a decision issued; stated it is a shame because the Commission was able to overcome that in recent years and have a fairly timely process.

Mr. Perea stated he does not see it happening, but if money is cut again, there is no foreseeing the future, but is hoping that in leaving the Chief position open, cutting from the top, minimizing key strokes, redoing the intake process and keep applying the resources toward investigation, and see what happens; he added that the case age is holding steady and that is the key factor in keeping it below 180 days as best we can.

Mr. Plotkin stated that he recalls NERC instituting the A-B-C processing of cases and asked if there was any room to evaluate the threshold for qualifying cases on those least qualified, raising the bar/parameters for the least qualified cases.

Mr. Perea added that with a 31% increase in cases from 2007 – 2008, NERC framed 12.8% more cases; stated that NERC gets a lot of “it’s just not fair” from employees who have been with an employer for 20 years and are getting laid off; stated that this is not an issue NERC deals with and that NERC is dismissing those cases, but that if the person insists on filing, they charge will be framed and will be assigned a “C” charge. He added that there are some “C” cases with basically the least merit where NERC does a minimal amount of investigation to make sure that NERC got it right; added that as cases are coming out of mediation, he is reviewing the position statements/cases to see if the case needs to be reclassified during the investigation, which is something that has not been done in the past; that he has spoken to the investigators and advised that if a case does not have any merit, bring it to him so they can discuss and possibly close the case; that what NERC does not want to do is narrow the net where something is missed which is why NERC is trying to scrutinize more on the front end.

Mr. Shipley asked if on cases NERC does dismiss, if NERC is finding that the Charging Party goes to EEOC to file. Mr. Perea stated while he has not heard, both agencies do pretty much the same process; that he spoke with the Director and the EEOC case age is approximately 270 days, but that the EEOC has recently received a ton of resources in the last 8 months, they went from 0 attorneys to 3 attorneys. Mr. Shipley commented that EEOC is taking longer than the 270 days in processing

complaints as based on the company he works for, there have been cases with EEOC where they have not heard anything in over a year.

Mr. Perea stated that EEOC has a process that NERC adopted to some degree, and that is placing cases in a holding drawer to keep the investigator's inventory at a more constant level; stated he knows that at one point, cases with EEOC aged 6 months before being assigned to an investigator and that he is hoping the cases with NERC will not reach that point; added that based on the number of cases coming in, NERC has the capacity to do about 950 or more cases a year, but NERC is receiving more charges than that – which means more cases than capacity.

Mr. Youngs commented that he is new to the Commission and needs to learn about funding, processes, how NERC gets money, and that it was mentioned there were complaints from consumers about untimely cases – he asked if NERC is putting up surveys/collecting data as some of the information can be useful to seek more funding and/or staff. Mr. Perea advised that NERC has tried to plead their case, along with every other state agency, and that NERC will keep pleading; stated statistics have been provided (how many cases received/types of cases received from the previous year – basic statistics) and that this information was provided to the subcommittees when discussing the budget. (Mr. Youngs was shown the statistical information in the packet)

C. Legislative Audit Closure

Mr. Perea advised that on November 5, 2009, NERC will be present regarding the final audit; stated there probably will not be any debate; that of the 7 audit findings, 5 were fully implemented and 2 were partially implemented; that the legislative audit bureau probably will not be asking any questions as they are satisfied that the audit issues have been addressed/implemented.

E. Legislative/Legal Update

Mr. Perea advised that SB 207, adding sexual orientation to public accommodation, NERC could not get the bill heard; stated that there was some decent legislation, but that NERC's bill died. He added that NERC had asked for a second AG opinion regarding adding sex in public accommodation – asking if they showed legislative intent by ignoring it as there has been no response back; stated that NERC may not get a response as there are some rules about pending litigation where they may just say they are not going to provide a new one.

Ms. Cole added that the domestic partnership did pass; that NERC was surprised the housing bill actually did get a hearing but that it was unfortunate that a fiscal note was attached at 5 p.m., the day before the 8 a.m. hearing. She added that the fiscal note, in her opinion, indicated somebody had gone through excruciating detail in what it would cost the other agency to prosecute housing issues; that without the ability to rebut, when the Committee asked NERC if it was in NERC's budget and were advised it was not, the Committee indicated they were done. Ms. Cole added that NERC will look into whether or not to resurrect the issue next time and be better coordinated and able to respond to fiscal notes.

Mr. Perea commented that Mr. Plotkin had tried to boost his mood during that hearing; adding that it was discouraging; it was his first run at politics and while a little discouraging, a lot was learned.

Mr. Plotkin stated that he appreciates NERC's Administrator's efforts and altruism and his beliefs in the political process and hopes that it was not thoroughly dashed; stated the way he looks at it is that NERC got a glass half full and in the years' past, the glass has often been empty; that NERC learned a lot this session and believes NERC has potential for next legislative session; that the bottom line is public accommodation is always going to be the toughest to crack because that is basically the foundation of the resort industry and anything that they see as threatening their livelihood, they find a way to persuade the legislators. Mr. Plotkin added that there are a couple years before the next legislative session and if all the homework is done, NERC will make some headway; concluded that he appreciated all the staff/administration for their efforts.

Mr. Shipley commented that it was a difficult time to go before the legislature with anything that had a dollar sign attached to it. Ms. Cole added that she thought bringing money in would be a good thing, but that NERC did not make the case.

F. Case Management Strategies for FFY 10

Mr. Perea advised that he had already spoken a little about case management and strategy.

G. Potential Commissioners' Study of Problems Which May Result in Discrimination

Mr. Perea advised that he has been with the Commission for approximately 1-1/2 years, and that somewhere in the 1960's, 1970's, 1980's, or possibly when NERC became part of DETR (Department of Employment, Training & Rehabilitation), that the statutory authority of the Commissioners was no longer used, that the information obtained is

very sparse. He stated he had gone to the State Archives to see what he could find and was able to obtain minutes from the early 1980's, which happens to be the second worst recession compared to the current one since the Great Depression; that the minutes reflect a lot of issues that have been discussed in the past Commissioner meetings; there was information about how hearing officers were used to hear cases and they would discuss whether to ratify the hearing officer's decision in the Commissioners' meeting and issues along those lines; that the Commissioners seemed to play a role in some of the hearing they had in the early 1980's. He advised he did not know when that practice changed, but he was going to look to see if there was some legislation that changed or if there were court decisions that changed the way it was happening, or if it is something that is a viable and useable tool, can the Commissioners go back and start adopting that statutory authority again; stated it makes interesting reading on what was happening in the early 1980's and that he will have the minutes distributed to the Commissioners.

Mr. Shipley stated that since he has been a Commissioner, approximately 12 years, the nature of the Commissioners' role is what it is now; that until last year, the Commissioners have not been involved with any appeals or decision on specific cases; the Commissioners are primarily an accountability board that gets together with the agency every quarter to review the progress and what is going on, only in limited ways being involved with the legislative process.

Mr. Perea advised that he had built into NERC's budget the authority to hold at least two hearings; however, while it is in the budget, NERC does not have the cash to cover the budget; that NERC has to be very careful regarding resources and obviously the resources with the AG's office as he believes NERC is a high maintenance agency to some degree, especially now with so many cases coming in; that NERC is sending a lot of cases to the AG's office; that if the statutory authority is a tool that NERC has to do the mission of the agency, then the tool needs to be put back in the tool box and, cannot be an idle threat. He brought up a Commissioners' charge, where issues do not effect just one entity but many entities – whether or not the entities are brought in for a group discussion, keeping in mind the open meeting law and whether its is good for the State of Nevada – he wants to be sure NERC and/or Administrator does not overstep any boundaries and create a heartache for everyone.

Mr. Shipley advised that it would be a good issue for NERC to review and report back.

Discussion continued about the Commissioners' role/relevance; comments made about these being the same issues discussed in many meetings; if there is no legislative restriction, can the Commissioners create a description of what their role is/are and give to Ms. Reynolds in terms of legality and what their (Commissioners) intended objectives are; when statute refers to Commission, is this the board or agency; study group regarding pending legislation and/or Commissioners' charge – keeping in mind open meeting law.

Mr. Perea concluded his report and advised that in regards to the next agenda item, he has asked Ms. Reynolds, DAG, to talk about two specific issues; that these are issues the State of Nevada has a much more difficult time dealing with than other states because of Nevada's major industry.

Mr. Plotkin stated that in regards to Mr. Perea's report on item G, that an area for discussion should be the Domestic Partnership Law that was created on October 1, 2009; stated that he can see to some degree an influx of potentially new complaints based on domestic partnership.

Ms. Reynolds stated that she disagreed with Mr. Plotkin as domestic partnership is not a protected category under the law unless a complaint is based on sex or sexual orientation

Mr. Plotkin advised that the ACLU is actively educating domestic partners, both same sex/opposite sex, on how to deal with being a domestic partner in the workplace; that the ACLU and a local law firm are providing public information seminars on how to deal with the law and employers/institutions as a new domestic partner; stated that possibly the DAG could communicate with the ACLU so that the Commission (board/agency) can find out what workplace issues are being raised as concerns under the new law; stated that he would like to see the agency have the information ahead of the office getting complaints and are not prepared to deal with them because of no feedback from the DAG.

Ms. Cole stated that she believes there are two issues that are problematic with the new law: 1) it does not specify what the enforcement mechanism is; it does not say equal rights but it does not say anything else either; and 2) she stated that while she did not have the statute in front of her, there is a clause/provision that says an employer may not discriminate – that when people hear that magic word, they automatically think to come to NERC; that as the DAG stated, NERC has to look at the underlying facts on claims that may come into NERC.

Ms. Cole advised that earlier in the year there was conversation with the Commissioners about interpreting statutes; that when there is ambiguity and inconsistency and unclarity, she believes the Commissioners do have the prerogative of making a determination how that statute will be interpreted, as long as it is across the board and there is a basis for it; stated it may very well be an issue that is going to come back before the Commissioners and require some action.

Mr. Perea advised that one of the reasons Ms. Reynolds was asked to explain the Supreme Court decisions is that Nevada has had a history/unique issues regarding age – this case has one that concerns him – what the impact would be to the state; that while there have been discussion no one has come to a consensus, but there is a state law verses a federal law and if it is not overturned, it could be an issue for NERC.

There was discussion about accessing Supreme Court decisions on-line; that the advanced opinions are kept for approximately 6 months, that while there may be information on the Internet, there was no specific web site known.

VIII. Public Comments

Mr. Shipley asked that those individuals participating to please identify themselves.

Dennis Maginot, Compliance Investigator II in the Reno NERC office advised that in regards to domestic partnership, he has received a couple of calls and one in particular was dealing with an employer offering health benefits to homosexual couples, but not to unmarried heterosexual couples; stated he believed he was able to provide guidance and believes the matter resolved; feels this is where NERC will have issues regarding domestic partnerships – the misconception that it is only homosexual partnerships.

Jim Smith advised he served as the NERC DAG in Northern Nevada from 2000 to 2006; that he saw the announcement in the paper and thought he would come to the meeting to say hello and that he is delighted to see the Commissioners in Northern Nevada; stated there are some challenging issues; that the Commissioners' role is always to be active to what conditions are in the community, economy and the demographics of the state; happy to be at the meeting.

Victor Garcia, with Radio Innovacion 1590 AM, is an Hispanic radio station transmitting only in Spanish; the station tries to keep the

community informed of what is going on, especially regarding subjects that they do not hear that much about.

Diego Martin, from the Latino community, introduced himself and stated he was a former co-worker of Ms. Cole's at NERC.

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

Discussion regarding next meeting date/location – January 7, 2010 in Las Vegas.

XI. Adjournment

Mr. Shipley adjourned the meeting at 2:03 p.m.

Respectfully submitted,

Lee Plotkin
Secretary/Commissioners

Date