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Administrator



COMMISSIONERS

Kevin E. Hooks, Chair
Tiffany Young, Secretary
Swadeep Nigam
Charlotte Centuori
Sean Higgins

DRAFT

Minutes

of the

Nevada Equal Rights Commissioners' Meeting

on January 26, 2016

I. Call to Order.

Kevin Hooks, Chair, called the meeting to order at 2:31 p.m.

II. Roll Call and Confirmation of Quorum, and Verification of Posting.

Norma Delaney, Administrative Assistant III, called roll and confirmed that a quorum was present, that the agenda was posted, and that certificates of posting are on file.

Members Present: Kevin Hooks, Chair; Swadeep Nigam; Lauren Scott, Sean Higgins; Tiffany Young.

Staff Present: Kara Jenkins, Nevada Equal Rights Commission (NERC) Administrator; Michael Baltz, Chief Compliance Investigator, NERC; Lila Vizcarra, Supervisory Compliance Investigator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); Javier Fernandez, Administrative Assistant II, NERC; and Norma Delaney, Administrative Assistant III, NERC.

Public Present: Keith Bowen, Bully Busters; Zach Rose-Heim, LGBT Educator; Holly Welborn, ACLU of Nevada.

III. Introduction of newly appointed Commissioner, Charlotte Centuori.

Ms. Jenkins, Administrator, NERC, introduced Ms. Centuori and provided the following:

Charlotte Centuori has worked as an in-house corporate attorney in the gaming industry in Las Vegas for 18 years for various manufacturing companies including Anchor Games, IGT, Shuffle Master and Bally Technologies. Prior to moving to Nevada, her professional focus was in the area of administrative law and legislation. She worked in state government in Nebraska for 11 years as General Counsel for the Nebraska State Fire Marshal, a position that included enforcement of the Americans with Disabilities Act.

Ms. Centuori has over 20 years of experience handling employment law issues, both in the public and private sectors. She is a former Nebraska state chair for Common Cause and was active in several community organizations in Lincoln, Nebraska before relocating to Nevada.

Ms. Centuori received her B.A and J.D. from the University of Nebraska-Lincoln and has been a member of the Nebraska State Bar Association and the Nevada Bar Association, the American Gaming Association and the Association of Corporate Counsel.

Since moving to Nevada, Ms. Centuori has volunteered for a variety of local organizations, including the Nevada Senior Medicare Patrol, Spread the Word Nevada and Three Square.

Ms. Jenkins welcomed Ms. Centuori to the Commission as did the Commissioners. Ms. Centuori commented that she is excited to be on the board.

Mr. Hooks stated that before proceeding with the agenda, he wanted to take agenda items out of order that needed to be addressed by the Commissioners first, and would be proceeding to agenda items 6, First Public Comment Period, and agenda item 7, Approval of Minutes.

VI. First public comment period.

None.

VII. Approval of Minutes.

Mr. Higgins made motion to approve minutes of September 29, 2015; Mr. Nigam seconded motion.

IV. Introduction of Zach Rose-Heim, LGBT Educator.

Ms. Jenkins introduced Mr. Rose-Heim and asked that he provide a 5-minute introduction of himself.

Mr. Rose-Heim advised that he is an LGBT educator in Nevada and works with Clark County School District as well as an HR team, which is a local non-profit that does training for students and teachers.

Mr. Rose-Heim stated that the training he provides addresses work place/school issues.

Mr. Rose-Heim stated that he works with students every semester with leaders in the Gay/Straight Alliance in Southern Nevada and provided his business card.

Mr. Hooks stated that he has seen the initials "LGBTQ" and asked Mr. Rose-Heim to explain the letter "Q" and how it is used.

Mr. Rose-Heim advised that the letter "Q" is referred to in two different ways; that sometimes it is referred to as questioning, which means the person may not have an identity that exists within the LGBT (Lesbian, Gay, Bisexual Transgender) community and is often a reclaimed term which is "queer" and has been previously used as a very derogative terms; that many in the LGBT have thought to reclaim that term and to claim ownership as an umbrella term that encompasses the entire family of LGBTQ individuals.

V. Introduction of Big Keith, Bully Busters.

Ms. Jenkins introduced Big Keith and asked that he provide a 5-minute introduction of himself.

Mr. Hooks stated that for disclosure, Big Keith has a contract with the Urban League and that they have been doing business together for almost 2 years, and added that Big Keith does great work for the community.

Big Keith advised that he started a program regarding bullying in the community centers and that Mr. Hooks was the first individual who gave him this opportunity. He stated that he and his wife had created the Bully Busters hotline, and that when he approached the schools, they did not want anything to do with it; advised that he and his wife had over 100 calls a day and they subsequently created a Bully Busters app for the cell phone and if a student is being bullied, they can turn the app on and place in their pocket and it will record for up to 3

hours, and proper authorities can be contacted. He advised that kids were not being taken out of school, but he would have parent/teacher meeting with school counselors and that 9 out of 10 times the problems were resolved.

Big Keith advised that grownups have people they talk to every once in a while, Bully Busters hotline/app was created for students to call to stand up for themselves. He stated that there are a few different programs, some are 22 weeks, 8 weeks, and 12 weeks and that he now has another avenue with NERC that he can refer students to regarding discrimination. Big Keith concluded that there can be teaching at school, but it also has to be taught at home.

Mr. Higgins asked if there was a program for those individuals who are doing the bullying so they know what they are doing is wrong.

Big Keith stated there is a program dealing with both sides; that by the time he is brought into the picture, the person who is doing the bullying is known and then brought into the program. He added that 85% of kids are good, it's the other 10-15% that some of their actions come from the home and the program lets them know that there is someone there to help them and each day could be a better day than the day before.

VIII. Discussion of ADA Accessible web sites and previous presentation by Scott Youngs, Project Director, Nevada Assistive Technology Resource Center (NATRC), University of Nevada, Reno (UNR).

Ms. Jenkins advised that Mr. Youngs had emailed her advising that he was unable to be present at the meeting but asked that she read the email he sent to the Commissioners/into the record:

“Regarding the NERC meeting on January 26, 2016 both myself and George McKinlay are unable to attend. But, I wanted to give the Commission an update on Agenda Item # 8 regarding the accessibility of State Web Based Programs and Services and other Information and Communication Technology.

As discussed at the November 2015 meeting the Assistive Technology Council was in the process of creating a draft document that could be presented to the Governor's Office or other appropriate entities. The letter would describe issues people with certain disabilities are facing when they interact with State Websites

and other services. At this time the full AT Council has not adopted a letter and are waiting to here back from a sub-committee on the draft. Because it was unclear about what we were asking from the NERC, it is asked that the Commission withhold from taking action on this item until the letter from the Assistive Technology Council is adopted. At that time it is anticipated that the letter will contain a suggested course of action that will address questions the Commission might still have, and/or what we might want them to do.

I appreciate your willingness, through the Commission, in assisting us with this issue and we hope to present a more succinct picture of what we are asking from the Commission after the Nevada Assistive Technology Council completes its work.

Since the November NERC meeting our project has met with some of the members of the State Executive Branch and their Website Accessibility staff. They have recognized that there is work to do on this topic and were very interested in working together to improve equal access to their web based services and programs to the extent feasible. We are currently working on scheduling a follow up meeting with Enterprise IT to move things forward.

In the meantime, I will continue to forward you relevant court cases and settlement agreements from the DOJ regarding this topic. These cases do provide a detailed method of becoming compliant.”

Mr. Hooks advised that the matter will be tabled for a future agenda item so that the Commissioners receive the best information possible for possible action.
(Note: email attached as Attachment A)

IX. Discussion Regarding Administrator's Report.

A. Personnel – New Position

Ms. Jenkins advised that the recruitment for the new Chief Compliance Investigator/Outreach Specialist for Public Accommodation training/outreach in schools/public places has been completed and she is in the process of scheduling interviews.

Equal Employment Opportunity Commission (EEOC) Work Sharing Agreement.

Ms. Jenkins advised that NERC's relationship with the EEOC is very good; that since she has been Administrator, NERC has met contract and there have been no rejections from the federal EEOC. She added that NERC has been

contracted for approximately 624 cases to close and will ask for an upward modification, which NERC does every year, as NERC closes more cases than contracted. Ms. Jenkins added that in asking for the upward modification, this also supplements NERC's budget.

C. Budget – State Fiscal Year 2016

Ms. Jenkins advised that the budget handout is provided in the packets and advised that there was a small surplus and that with this surplus NERC is not operating in the negative and that she has nothing new to report since last meeting.

D. Performance Indicators

Ms. Jenkins referred to the handout titled "NERC Performance Indicator Highlights" and advised that items 1, 2, and 3 are items the legislature asked NERC to report on. She advised that in regards to:

1) Percent of Cases formalized – 22 calendar days

NERC does not meet this standard; goal is 82%; status is 3%, and that the majority of cases are perfected within 70 days. She advised that due to the amount of cases NERC receives and size of agency, it often takes 5 weeks for a person to meet with intake officer to determine if prima facie can be met;

2) Percent of EEOC Contract Met (cases closed)

Ms. Jenkins advised that NERC has closed approximately 358 cases toward contract of 624 cases to be closed by end of federal fiscal year ending September 2016;

3) Percent of Cases Resolved through Mediation

Ms. Jenkins advised that NERC always does really well in regards to this Performance Indicator; that when a case settles, hopefully the Charging Party can move on with his/her life; goal is 39.87%; status is 79%.

E. Outreach 2016

Ms. Jenkins advised that in regards to outreach training, Ms. Vizcarra and she provided training to approximately 280 individuals since last meeting.

Mr. Hooks suggested Ms. Jenkins provide outreach at the Urban League Job Training Program.

Ms. Jenkins referred to Michael Baltz, Chief Compliance Investigator for additional information regarding types of complaints NERC has received.

Mr. Baltz referred to Tab 5 in the packet and read into the record the various statistics. Mr. Baltz advised that some complaints may have more than 1 allegation and show up more than once.

Ms. Jenkins concluded the Administrator's Report.

**X. Discussion regarding criteria for public hearing AND
X1. Discussion and decision regarding criteria for the Administrator to consider when selecting cases for hearing pursuant to NRS 233.210.**

Mr. Hooks stated that the subject regarding criteria for a public hearing was addressed at the last meeting on September 29, 2015 and noted that included in the Commissioners' packet is a copy of minutes from a December 6, 2011 meeting in which criteria was discussed and motion passed.

Ms. Jenkins advised that the criteria that was passed was the *Charging Party had to agree* to a public hearing after a conciliation failure, to bring the matter before the Commissioners for a public hearing; the allegations with a cause finding are brought before the Commissioners to decide remedy – needs to *be sufficient evidence*; and the Commissioners would hear *state only cases*, even though the Commissioners can hear employment cases. (*Italics for emphasis on criteria points previously agreed on in December 6, 2011 meeting*)

Ms. Jenkins stated in regard to employment allegations, should conciliation not be successful, NERC notifies the EEOC (Equal Employment Opportunity Commission) who will make decision whether to pursue the matter and/or issue the Charging Party a Right-to-Sue letter. She advised that the Right-to-Sue letter advises the Charging Party they have 90 days in which to file into court – a Charging Party can ask for punitive damages, more than just actual damages.

Ms. Reynolds, DAG, added that remedies under federal law are much greater than under state law; that there have been several attempts to make state law equivalent to federal law but the Governor vetoed that in 2013; that a Charging Party who comes before the Commissioners are limited to 2 years back pay.

Mr. Higgins asked Ms. Reynolds if the Commissioners could delegate the hearing to a hearing officer – Ms. Reynolds stated that is correct. Ms. Reynolds stated

that to delegate to a hearing officer, it could be to a Commissioner or possibly a hearing officer within DETR.

Don Soderberg, Director, Department of Employment, Training & Rehabilitation (DETR) advised that there are appeals officers in unemployment insurance; however, they are paid through federal grants and would not be available for this type of hearing. Mr. Soderberg added that when DETR has conducted hearings, they go through the Department of Administration by statute.

Ms. Reynolds responded that she would probably be prosecutor and that there would be independent counsel from the Attorney General's Office to represent and assist in the hearing and act in an advisory capacity.

Mr. Higgins asked Ms. Reynolds to explain to the Commissioners a cause finding.

Ms. Reynolds stated that a cause finding is where NERC would say it is more probable than not that discrimination occurred. She added that because NERC may believe discrimination occurred does not mean the case would be heard by the Commissioners. Ms. Reynolds added that the criteria to bring a case before the Commissioners, as identified in the December 6, 2011 meeting, is the criteria and without the cooperation of the Charging Party it is a very difficult case to prove – it is public and some individuals may not want their name in the papers.

Ms. Jenkins stated while there has been no motion passed in regards to the criteria for a public hearing, that agenda items 10 and 11 are intertwined and that she wanted to explain how she would like to proceed once conciliation has failed.

Ms. Jenkins advised that the Charging Party may not have the funds to go to court, whether employment or state only; that even though the prior Commissioners limited the case type to state only, as the Administrator, she would like to bring state and federal cases before the Commissioners to determine whether they would like to hear the case or not. Ms. Jenkins stated that she would like to focus on and how DETR operates regarding customer service – are we doing a service to the customers of this state? Are we doing it well? Are we efficient with it? Are we wasting peoples' time? Are we giving them the "ok" to go to court when we know it will take 3-4 years to get on a court docket when it is possible to get some kind of resolution? Ms. Jenkins stated that this is what she would like the Commissioners to consider when discussing what the criteria should be.

Ms. Jenkins stated that the type of case she would bring before the Commissioners would be where the Charging Party was in agreement to have a public hearing; there would be sufficient evidence so the DAG can present the case and whether a private employer or state entity, the hearing would be fair, concise, clear and the Commissioners make decision. She added that when a case is recommended to the Commissioners, all avenues have been addressed for participation, costs, confidence in her to bring case, and that each case has an equitable opportunity for vetting.

Ms. Reynolds commented that in selecting cases to be brought before the Commissioners, the Charging Party is always part of the discussion and that the Commissioners could only grant 2 years back pay whereas in court a Charging Party can get punitive damages.

Ms. Jenkins added that conciliations can last between 2-3 hours and that during a conciliation, the Charging Party is advised of what can happen if successful or not successful. She added that for a Charging Party who does not have the resources for litigation and unable to hire an attorney, what happens to them? Ms. Jenkins asked the Commissioners, what do you want the criteria to be?

Ms. Reynolds asked Ms. Jenkins if based on old motion, did Ms. Jenkins want to remove state only, and; in regards to the other criteria, the Charging Party has to agree and there must be sufficient evidence to hear a case? Ms. Jenkins responded yes to both questions.

Mr. Higgins made motion to amend current criteria set forth in removing being limited to state only cases, and the Commissioners are delegating to the NERC Administrator, Ms. Jenkins, to bring cases to the Commissioners. Ms. Centuori seconded motion – motion passes.

XII. Discussion regarding meeting innovation.

Mr. Hooks commented that technology is great and proposed to digitize the process to possibly include tablets for the packets to be uploaded in PDF format for meetings as it would save a lot of paper, recognizing that there is a budget NERC must also consider.

Ms. Jenkins stated she would check into costs/budget.

XIII. Discussion regarding frequency of meetings, location and time of next meeting and agenda items. Possible meeting in Las Vegas with all Commissioners.

During open discussion it was agreed that the Commissioners would meet three times a year unless otherwise needed to vote on hearing.

Ms. Reynolds commented if the Commissioners are conducting a hearing, the employer must be noticed 30 days in advance and the rules of the open meeting law must be met, and suggested that if there is a hearing, to make that the only agenda item; a fine hearing could be included on a regular meeting agenda.

XIV. Adjournment.

Mr. Hooks adjourned meeting at 3:43 p.m.

Respectfully submitted,

Tiffany Young, Secretary

Attachment “A”

Norma Delaney

From: Scott W Youngs <syoungs@unr.edu>
Sent: Thursday, January 21, 2016 4:22 PM
To: Kara Jenkins
Cc: Norma Delaney
Subject: NERC Mtg Update

Regarding the NERC meeting on January 26, 2016 both myself and George McKinlay are unable to attend. But, I wanted to give the Commission an update on Agenda Item # 8 regarding the accessibility of State Web Based Programs and Services and other Information and Communication Technology.

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In the meantime, I will continue to forward you relevant court cases and settlement agreements from the DOJ regarding this topic. These cases do provide a detailed method of becoming compliant.

Please submit this email into the record for the 1/26/16 meeting.

Scott Youngs, Project Director
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