

**MINUTES OF THE REGULAR COMMISSION MEETING OF THE COMMISSION ON
HUMAN RIGHTS AND OPPORTUNITIES
THURSDAY, DECEMBER 11, 2008, 2:00 P.M.
21 GRAND STREET, HARTFORD, CONNECTICUT 06106
LARGE CONFERENCE ROOM**

COMMISSIONERS PRESENT

Andrew Norton, Chairperson
Cheryl Lynn Clarke (participated telephonically)
Larry Conaway (joined the meeting in progress)
Shelley Copeland
Alexia E. Cruz
Jimmie L. Griffin
John Lobon

COMMISSIONERS ABSENT

Edward Mambruno, Secretary

STAFF PRESENT

Robert J. Brothers, Jr., Acting Executive Director
Alvin Bingham, Affirmative Action and Contract Compliance Supervisor
Donald Newton, Chief of Field Operations
James O'Neill, Legislative and Regulations Specialist
Michelle Provost, Fiscal Administrative Supervisor
Gloria Sparveri, Affirmative Action Program Manager
David Teed, Assistant Attorney General
Linda Civitillo, Executive Secretary

I. CHAIRPERSON

A. Convene Meeting

Chairperson Andrew Norton convened the December 11, 2008 Regular monthly meeting of the Commission on Human Rights and Opportunities at 2:09 p.m.

II. SECRETARY

A. Review and Approval of Minutes of November 13, 2008 Regular Commission Meeting

In the absence of Secretary Edward Mambruno, Commissioner Jimmie Griffin requested a motion approving the minutes of the November 13, 2008 Regular Commission meeting. A motion was made by Commissioner Copeland and seconded by Commissioner Cruz to approve the minutes of the November 13, 2008 Regular Commission meeting as presented. There was no discussion. The motion carried with Commissioners Clarke, Copeland, Cruz and Griffin voting in favor of the motion. Commissioner Conaway was not present for the vote, Commissioner Lobon abstained and Chairperson Norton did not vote on the motion.

III. AFFIRMATIVE ACTION RECOMMENDATIONS

A. Agencies Proposed Affirmative Action Plans

Staff Recommendations: **Approvals**

1. Department of Administrative Services
2. Department of Agriculture
3. Department of Motor Vehicles

Chairperson Norton requested a motion to accept the staff recommendations for approval and retention of annual filing status for the Department of Administrative Services, Department of Agriculture and Department of Motor Vehicles. A motion was made by Commissioner Clarke and seconded by Commissioner Griffin to accept the staff recommendations for approval and retention of annual filing status for the three noted affirmative action plans. The Chairperson invited Alvin Bingham, Affirmative Action and Contract Compliance Supervisor, to introduce the agency representatives in attendance and provide an overview for each approval recommendation.

Mr. Bingham introduced Commissioner Brenda Sisco, Amanda Anduaga-Roberson, EEO Manager; Ann Mikulak, EEO (retiree) at Large; Kathy Bruni, Principal HR Specialist; and Dave Lynn, Human Resource Manager, in attendance from the Department of Administrative Services. The plan is being recommended for approval based on compliance with the following: the plan contains all the elements required, the agency has demonstrated every good faith effort to achieve its goals and the agency's previous plan had no deficient elements, therefore, the agency is in compliance. Short-term goal achievement was 6 out of 12 or 50%, long-term goal achievement was 1 out of 1 or 100% and total goal achievement was 7 out of 13 or 54%. In addition, 4 out of 7 possible promotion goals were met or 57%. The plan was approved for each of the past five years. There was no discussion on this Item.

The following individuals were in attendance from the Department of Agriculture: Commissioner F. Phillip Prelli and Alicia Nunez, EEO Specialist. The plan is recommended for approval based on compliance with the following: the plan contains all the elements required, the agency has demonstrated every good faith effort to achieve its goals and the agency has substantially addressed deficiencies noted by the Commission in the prior plan review. Short-term goal achievement was 2 out of 2 or 100% and total goal achievement was 2 out of 2 or 100%. The plan was disapproved in 2003 and approved in 2004, 2005, 2006 and 2007. Commissioner Griffin asked if a representative from the Department could comment on the low percentages of African-Americans and Hispanics in the agency's total workforce. Commissioner Prelli addressed the Commissioners and stated there is an effort underway to increase the numbers, however, one of

the problems the agency has experienced in the past two or three years it that a lot of their hires have been in very specialized areas. The agency did have two White female hires in the category of Property Agent. The agency has also begun to implement a wider area of recruitment when positions became available. Commissioner Prelli added that many times the certified examination lists provided by the Department of Administrative Services do not include African-American or Hispanic candidates from which to hire. In closing, Commissioner Prelli stated his belief that next year's plan will reflect improvements in this area. The agency's last two hires have been Hispanic individuals and the agency has had some good qualified candidates from which to choose. There was no further discussion. (Commissioner Conaway joined the meeting)

Chairperson Norton noted for the record that he was appointed to the Commission by the then House Minority Leader, who is now the Commissioner of Motor Vehicles, but has since been reappointed by his successor. Mr. Bingham introduced Commissioner Robert Ward and Natalie Shipman, EEO Manager, in attendance representing the Department of Motor Vehicles. The plan is being recommended for compliance based on the following: the plan contains all the elements required, the agency has not met all or substantially all of its hiring and promotion goals, all program goals were met, the agency has demonstrated every good faith effort to achieve its goals and the agency has substantially addressed deficiencies noted by the Commission in the prior plan review. Short-term goal achievement was 17 out of 32 or 53%, long-term goal achievement was 1 out of 2 or 50%, total goal achievement was 18 out of 34 or 53% and promotion goal achievement was 12 out of 21 or 57%. The plan has been approved for each of the past five years. No further discussion followed on this item.

A motion having been made and properly seconded, the Chairperson called for a vote. The motion carried with Commissioners Clarke, Conaway, Copeland, Cruz and Griffin voting in favor of the motion. Commissioner Lobon abstained and Chairperson Norton did not vote.

Staff Recommendation: **Disapproval**

1. Department of Public Safety

A motion was made by Commissioner Griffin and seconded by Commissioner Clarke to accept the staff recommendation for disapproval and retention of annual filing status for the Department of Public Safety. Mr. Bingham introduced Commissioner John Danaher, Deputy Commissioner Thomas Daveron and Barbara Lynch, EEO Manager, in attendance from the Department of Public Safety. The plan is being recommended for disapproval based on non-compliance with the following: the workforce, considered as a whole and by

occupational category, is not in parity with the relevant labor market area, the agency has not met all or substantially all of its hiring, promotion and program goals, the agency has not demonstrated every good faith effort to achieve its goals and the agency has not substantially addressed deficiencies noted by the Commission in the prior plan review. Short-term goal achievement was 31 out of 76 or 41%, total goal achievement was 31 out of 76 or 41% and promotion goal achievement was 59 out of 86 or 69%. The plan was approved in 2003 and 2004, approved by default in 2005, conditionally approved in 2006 and approved in 2007.

Valerie Kennedy, HRO Representative, reviewed the plan and summarized the deficiencies found in the plan. Ms. Kennedy provided the Commissioners with two examples of where the agency did not adequately address goal applicants that were not hired. Ms. Kennedy indicated that good faith effort is to explain what happened to every goal candidate that was in a search when a non-goal candidate was hired. It must be detailed, searching and complete. When the agency discussed goal candidates, there was no reason given as to why the goal candidates were not hired. These problems occurred throughout the plan. Chairperson Norton asked if it is acceptable if someone writes only good things about an applicant or does there need to be a reason why the goal candidate did not measure up. Ms. Kennedy confirmed that is correct. Ms. Kennedy also emphasized that there were a number of instances where there were goal candidates on the certification list, but none of them were chosen for interviews and the agency did not explain how candidates were chosen. Ms. Kennedy added that the goals analysis section has been weak or deficient in prior plans by the previous reviewer. In closing, Ms. Kennedy noted that in addition to not meeting substantially all of its goals and not demonstrating good faith effort, the agency also did not correct a deficiency from the prior plan and, therefore, did not meet the standard of review. Neva Vigezzi, Affirmative Action Program Analyst, reiterated that the examples provided by Ms. Kennedy show that the agency had goal candidates that were rated as "highly recommended" or "very highly recommended," but were not hired without explanation.

Commissioner Danaher and Ms. Lynch addressed the Commissioners. Ms. Lynch stated this plan was prepared the same as other plans have been in the past. She indicated she received technical assistance several times and the only advice she was given regarding goals analysis is that the way they are written is too nice and that they should be more negative. Ms. Lynch acknowledged there was some information missing pertaining to how candidates were selected for interviews, however, she noted that when a candidate's name appears on a certification list, it means they are qualified to fill the position. It is up to the agency to determine how to get the best candidate to fill the position. Ms. Lynch also stated her belief that the agency has demonstrated good faith effort as previous plans have been written the same way. She asked that future technical

assistance sessions provide more specific guidance regarding goals analysis so the agency can be in compliance.

Commissioner Clarke raised a concern that after reading the summary there appears to be so much information missing pertaining to qualified goal candidates. Ms. Lynch stated she is unclear as to what was done incorrectly as she has prepared the plan the same way for nine years. Commissioner Copeland suggested that the plan be conditionally approved and CHRO work with the Department to remedy the deficient areas. Ms. Kennedy stated that two weeks following a Commission meeting, agencies receive a detailed explanation which outlines significant problems that need to be remedied immediately.

Lengthy discussion followed as to whether the same recommendation would have been made had the previous reviewer reviewed the plan. Commissioner Lobon raised a concern regarding the fact that the plan has been approved for a number of years and is now being recommended for disapproval with a different reviewer and it points to internal problems. Commissioner Cruz commented that this is not a new issue and that agencies have come before the Commissioners saying new rules or standards are being applied or they are not receiving technical assistance. Chairperson Norton recommended that if an agency is being proposed for a less favorable action from the previous year and it is a different reviewer, the previous plan should be looked at as well. Acting Executive Director Brothers stated he has already begun to look into the matter so that agencies can be assured the same standard of review is being applied. No further discussion followed.

Chairperson Norton called for a vote on the motion to disapprove the affirmative action plan for the Department of Public Safety. Commissioner Clarke voted in favor of the motion and Commissioners Conaway, Copeland, Cruz, Griffin and Lobon opposed the motion. Chairperson Norton did not vote. The motion failed. A motion was made by Commissioner Griffin and seconded by Commissioner Copeland to conditionally approve the affirmative action plan for the Department of Public Safety and retain annual filing status. The motion carried with Commissioners Conaway, Copeland, Cruz, Griffin and Lobon voting in favor of the motion. Commissioner Clarke opposed the motion and the Chairperson did not vote.

IV. NEW BUSINESS

- A. Request for Contract Compliance Exemption Between Department of Transportation and Metro-North Railroad
- B. Request for Contract Compliance Exemption Between Judicial Branch and Cornell University

- C. Request for Contract Compliance Exemption Between Judicial Branch and RR Donnelley
- D. Request for Contract Compliance Exemption Between Department of Transportation and Transcom, Inc.
- E. Request for Contract Compliance Exemption Between UCONN and The Nielsen Company, LLC
- F. Request for Contract Compliance Exemption Between UCONN Health Center and Otis Elevator
- G. Request for Contract Compliance Exemption Between Connecticut Community Colleges and Blackboard, Inc.
- H. Request from the Office of Policy and Management for an Extension of Blanket Exemption Regarding Contracts Between State Agencies and Federal and Other Governmental Entities

Chairperson Norton asked Acting Executive Director Brothers to outline the recommendations for each contract compliance exemption request on today's agenda. Mr. Brothers indicated Item IV.A. is a request between the Department of Transportation and Metro-North. Metro-North has, in the past, raised two statutes – Sections 16-343 and 16-344 – which defer issues with Metro-North to the state of New York. Metro-North raised that similar defense in a recent CHRO case before a Human Rights Referee. The Commission is currently appealing the Referee's decision. Irrespective of the appeal, the staff recommendation is to grant the contract compliance exemption request. Item IV.B. is a request between the Judicial Branch and Cornell University. Cornell University, through a statutory provision, is an agent of another state and would fall under the blanket exemption in effect until the end of this month. The recommendation is to grant the request. With respect to Item IV.C. between the Judicial Branch and RR Donnelley, RR Donnelley is refusing to place the item of making a resolution by their board of directors on their agenda. The recommendation is to deny the request. Item IV. D. is between the Department of Transportation and Transcom. Transcom is an entity that allows public agencies to share video feeds of highway issues. The recommendation is to deny the request without prejudice because there is some additional information that is needed. In addition, Transcom is attempting to get their board to pass the required resolution. Item IV.E. is between UCONN and The Nielsen Company. The original recommendation was to deny the request without prejudice as noted in the correspondence included in the Commission packet. As of today, the recommendation has been changed to conditionally approve the request. Supplemental information pertaining to this request was provided to the Commissioners at today's meeting. It is a one-time agreement and is based

upon a positive action on the part of the contractor to come. Item IV.F. is being recommended to deny without prejudice. The request is between UCONN Health Center and Otis Elevator. Otis Elevator is similar to United Technologies in that it is located in the state of Connecticut and it's the Commission's position that they should comply with the law. Item IV.G. has been withdrawn as the contractor, Blackboard, has been able to comply with having their board get the required resolution. Item IV.H. is a continuation of a blanket exemption between the state and all federal and other governmental agencies that runs through the end of the year. Attorney Gareth Bye, on behalf of the Office of Policy and Management, is requesting the blanket exemption continue for one year, however, the Commission's recommendation is to extend the exemption for six months. Mr. Brothers noted it is his intent to set up a monitoring procedure to determine what types of contracts are falling under the blanket exemption. Mr. Brothers also indicated that he has been working with Attorney Bye on this matter. Leslie Langworthy from UCONN addressed the Commissioners briefly regarding Item IV.E. She confirmed that although the recommendation is to conditionally approve the request, she stated that she cannot guarantee the conditions that have been requested can be fulfilled by the contractor. Mr. Brothers stated that Ms. Langworthy's concerns are more a matter of compliance and would not change the current staff recommendation. There was no further discussion.

A motion was made by Commissioner Cruz and seconded by Commissioner Griffin to accept the staff recommendations to grant an exemption in Items IV.A. and B., deny Item IV.C., deny without prejudice Item IV.D., conditionally approve Item IV.E., deny without prejudice Item IV.F., grant for six months Item IV.H. and take no action on Item. IV.G. The motion carried unanimously. Chairperson Norton did not vote.

V. DIVISION REPORTS

A. Affirmative Action Program Manager's Report

Gloria Sparveri, Affirmative Action Program Manager, addressed the Commissioners and indicated her monthly reports were included in the mailing. She noted there is not much to report on at this time as she is currently working on the plan and the goals have not yet been established. She is in the process of setting the goals now for this reporting year and is preparing a first draft of the plan for the Acting Executive Director's review. Chairperson Norton explained that Ms. Sparveri was asked to report to the Commissioners on a monthly basis regarding the status of the Commission's plan. The reports now include the recently implemented protocol of providing the Commissioners with the justification for any non-goal hire. There was a short discussion as to whether it would be possible for the Commissioners to get a copy of the plan prior to its formal submission and review and whether it may represent a conflict to do so.

Mr. Brothers indicated that while the head of the agency is ultimately responsible for the plan, feedback from the Commissioners is important and would be welcome. He agreed to look into the matter. He also indicated he will work with Ms. Sparveri to include more detailed information in the monthly reports relative to the various components of the plan in an effort to provide the Commissioners with more information than is currently contained in the reports.

B. Fiscal Report

Michelle Provost, Fiscal Administrative Supervisor, indicated the Personnel and Fiscal Status Reports were provided to the Commissioners in their mailing packet. In response to a question from Commissioner Copeland regarding expenditures for marketing, public relations and training, Ms. Provost stated that federal funding is utilized for travel and training. In addition, the Commission recently conducted an outreach program and federal funding paid for that as well. As the current report prepared by Ms. Provost is a report of state expenditures from the CHRO fund, she agreed to prepare a separate report for the Commissioners reflecting what dollars are spent using federal funding. The Employee Assistance Program is also up for renewal in February and that expenditure will be reflected after February. Commissioner Lobon raised a question regarding directives concerning the budget deficit and the status of the Central Office move. Ms. Provost reported the agency has had multiple areas reduced; most recently the equipment account was decreased. Personnel services and other expenditures have been cut by five percent. Ms. Provost stated she does not anticipate further cuts in addition to the five percent for this fiscal year. Negotiations concerning the Central Office move are currently pending with the Department of Public Works.

Ms. Provost also provided a brief overview regarding the status of the contract with Recruitment Enhancement Services for the Executive Director search. The contract has moved through two offices of review within the company. It is now before the final office for review and signature and they anticipate having that accomplished before the next Commission meeting. Ms. Provost added that she will need to determine when their next board meeting will be held so the company can apply for an exemption if needed.

C. Field Operations Report

The Report on Caseload Statistics was furnished to the Commissioners in their mailing packet. Donald Newton, Chief of Field Operations, welcomed questions or comments from the Commissioners. Commissioner Cruz asked if there is more than one class basis alleged in a complaint, is it counted twice. Mr. Newton indicated the bases will most often exceed the number of actual complaints as an individual could have multiple claims. An example of "other" might be a violation of the State Code of Fair Practices.

D. Legislative Report

James O'Neill, Legislative and Regulations Specialist, reported that the Governor's Office approved all of the Commission's 2009 Legislative proposals with the exception of Proposal 4, which dealt with the enforcement of a hearing officer's decision. There was a short discussion regarding the status of the Governor's Task Force on CHRO. Mr. O'Neill indicated that the last meeting was held in September. A final set of draft recommendations was reviewed by the Office of Policy and Management, who made some minor revisions to them. Mr. O'Neill agreed to forward a copy of the most recent set of draft recommendations to the Commissioners.

E. Managing Director's/Acting Executive Director's Report

Acting Executive Director Brothers provided a brief update. He reported that a Secretary II in the Legal Division resigned effective December 18. Mr. Brothers indicated he has already begun the process of seeking refill of the position and delegating the various duties. A copy of the Auditor's Report for the fiscal years ending June 30, 2005, 2006 and 2007 was included in the Commissioners' mailing. Mr. Brothers stated he has begun to take action on some of the recommendations in the report. There was a short discussion concerning some of the recommendations, including the Martin Luther King Commission's failure to report to the Governor's Office as required and the fact that an annual evaluation was not done for the Executive Director. Commissioner Clarke noted her name was omitted with the names of the Commissioners who were serving as of June 30, 2007. Mr. Brothers stated he would contact the Auditor's Office regarding the oversight. In closing, Mr. Brothers confirmed there are two reopening requests on today's agenda and counsel for both sides were in attendance. Counsel for the complainants left earlier. Respondent's counsel was still in attendance and requested an opportunity to appear before the Commissioners.

Commissioner Copeland raised the issue of scheduling a one-day training program for state agency affirmative action personnel, possibly utilizing the services of a retiree. Mr. Brothers indicated he would like to develop a process to train all state agencies as to how to develop an affirmative action plan, however, currently the agency does not have the resources to do so. He did agree to look into the feasibility of developing a training process and stated he would meet with the staff of the Affirmative Action and Contract Compliance Unit as early as possible to begin discussions regarding the issue. He will report back to the Commissioners next month.

VI. EXECUTIVE SESSION

In accordance with Section 1-225(c) of the Connecticut General Statutes, as amended, it was moved by Commissioner Conaway and seconded by Commissioner Cruz that the Commission go into Executive Session, including inviting Acting Executive Director Brothers, Assistant Attorney General David Teed and Attorney Holly Cini, for a portion of the Executive Session, for the purpose of discussing pending litigation, the reopening requests and personnel matters as they may arise. The motion carried unanimously. Chairperson Norton did not vote on the motion. All members of the public were excused from the Executive Session.

VII. RETURN TO REGULAR SESSION

It was moved by Commissioner Conaway and seconded by Commissioner Griffin to return to Regular Session. The motion carried unanimously. Chairperson Norton did not vote. The Chairperson indicated no votes were taken during the Executive Session.

VIII. VOTE ON EXECUTIVE SESSION ITEMS

A. Report on Pending Claims or Pending Litigation

There was no discussion and no action required on pending claims and pending litigation.

B. Reopening Requests

1. Carol Rubinow v. Boehringer Ingelheim Pharmaceuticals – CHRO Case No. 0820294
2. Darlene Russell v. Boehringer Ingelheim Pharmaceuticals – CHRO Case No. 0820292

A motion was made by Commissioner Lobon and seconded by Commissioner Conaway to accept the staff recommendation to grant the reopening requests in the matters of Carol Rubinow v. Boehringer Ingelheim Pharmaceuticals, CHRO Case No. 0820294, and Darlene Russell v. Boehringer Ingelheim Pharmaceuticals, CHRO Case No. 0820292, for the limited purpose of granting a Release of Jurisdiction. The motion carried with Commissioners Clarke, Conaway, Copeland and Lobon voting in the affirmative. Commissioners Cruz and Griffin opposed the motion and the Chairperson did not vote.

C. Personnel Matters

There was no discussion and nothing to report.

IX. ADJOURNMENT

Prior to adjourning the meeting, the Chairperson recognized Commissioner Conaway. Commissioner Conaway announced that this is his last Commission meeting. He was in contact with the office of the Speaker of the House and indicated he was not accepting reappointment. He stated he is not resigning, but rather he is completing his term. Commissioner Conaway thanked everyone for their hospitality and wished everyone well in the important work of the Commission.

There being no further business to come before the Commission, it was moved by Commissioner Griffin and seconded by Commissioner Cruz to adjourn the meeting at 5:12 p.m. The motion carried unanimously. Chairperson Norton did not vote.