

PITTSBURGH COMMISSION ON HUMAN RELATIONS

MINUTES
November 3, 1997

Attendance: Harry Kunselman, Chair
Curtis Smith
Barbara Burstin
Alma Speed Fox
Robert McClenahan
Father Lou Vallone
B. J. Samson
Dr. George Board
Elizabeth Pittinger
Pamela Golden

Staff: Charles Morrison, Director
Connie Miskis Zatek
George Monroe
Kevin Trower, Legal Counsel
Yancy Miles

Guests: Dave Goldberg, Controller's Office
Dr. Swanson, Dr. Marian, Dr. Manzetti, and staff of University of Pittsburgh, IRB

I. CALL TO ORDER

The meeting was called to order at 3:40 p.m. by Harry Kunselman, Chair.

The Minutes of the October 6, 1997 meeting were unanimously approved, pending obvious typographical corrections.

II. PRESENTATION BY UNIVERSITY OF PITTSBURGH, IRB

RE: Efficacy of hypothermia treatment in severe head injury

Dr. Marian was introduced and noted that this study has been in process since 1994, and in fact, was part of the reason the Federal Drug Agency formulated changes in procedures regarding waiver of informed consent.

Dr. Marian explained that the object of the study is to improve outcomes in severe head trauma or Three critical areas of research are: cardiac arrest, injury, pulmonary arrest and traumatic brain injury. In each of these categories, the victim is rendered unconscious for a period of time ranging from several minutes to several months. The longer a person is unconscious, the greater the chance for permanent brain damage.

Dr. Marian indicated he became interested in this particular field of research approximately ten years ago. Typically, persons who suffer traumatic brain injury are males between the ages of 15 and 30. In the early stages of research it was found that secondary injury can be caused relating to blood flow to the brain. By late 1980, it was determined that if blood flow could be stopped for a short period of time, the prognosis for recovery was improved. As a result, researchers began to dissect out metabolic problems that could cause secondary injury to the brain after a severe head injury.

In 1990, Guy Clifton studied the cooling of the brain in animal studies and saw "profound outcomes", particularly in brains that were cooled and re-warmed again. There was about a 50% improvement. Later, research continued on five patients and it was determined that the procedure was safe and there was little or no potential for complications.

Prior to this research study, hypothermia was used for a long time in surgery. Patients suffering from aneurysms must be at full circulatory arrest before surgery to remove the aneurysms can be undertaken. In these instances, the body is cooled and then slowly re-warmed.

As a result of the initial research, the IRB was given approval to make a wider study. A pilot study was completed in 1994 and the results published in a medical magazine. It is not known if the treatment would be more effective if the body was cooled for two days instead of one day.

In 1995/96, the New York Times published an article which raised concern that study managers were being less than scrupulous in obtaining the waiver of informed consent. Shortly thereafter, the Federal Drug Administration put a halt including new patients in the study. About a year later this decision was reversed through the support of Congress.

During this one year period, the study did not advance, but data collection continued. As a result, very discriminating statistics surfaced: no individuals of African-American, Hispanic or indigent backgrounds were placed into the original study. Pitt's current statistics are 91% Caucasian, 9% African-American and one Hispanic; 78% are male, 22% are female -- which is basically the profile nationwide. The classic patient profile is the 20-year old drunk who is involved in an automobile accident.

As to the reaction of families, 34.5% of the patients in the study were entered by a waiver and resulted in no problem with families. None have been upset or angry for having been a part of the study. Many patients have multiple traumas and the potential for complications.

Typically, 15 to 20 patients are deemed eligible to enter the study during any given year. During 1995, only two or three were enrolled.

The basic procedure is to cool the body for 24 hours to approximately 89 degree Fahrenheit, and then re-warm the patient over the next 12 hours. Assignment to receive standard procedure or the cooling procedure is made randomly by a central computer in Houston, Texas, based on the number of cases accepted regionally.

Victims of direct gunshot wounds to the head are not included in the study because the outcomes for closed head injury have a smoother curve ranging from normal to death. However, 80% of patients suffering from gunshot wounds to the head will die. In addition, the bullet tends to destroy the central brain system.

In response to a question of why children are not included in the study, Dr. Marian stated that ethical concerns warrant adult research first, before moving into the area of approving the same procedures for children.

If the procedure for waiver of informed consent was not utilized, the goal of the study to enroll 600 patients in six years would increase to possibly twice as long and costs would be directly increased, too. Generally, studies of more than eight to ten years are deemed to be too long; studies of four to five years are more acceptable.

Dr. Marian indicated that there is also an external monitoring committee which consists of health, religious and community persons, whose responsibility is to review research findings every six months. They are instructed to stop the study at any time after 300 patients where no benefit or 20% benefits are determined. This has not occurred. This monitoring committee adds another element of protection.

III. COMPLIANCE UPDATE

The Director introduced Toya Noll, an undergraduate at the University of Pittsburgh, who will be serving an internship with the Commission. She hopes to enter law school in the fall.

Director Morrison reported that the EEOC contract for 1998 has not yet been received, but became effective as of October 1, 1997. All cases closed since that date are being applied to the 1998 contract; there were 32 during the first month. It is anticipated that the 1998 contract will be at a higher funding level than in 1997.

IV. DIRECTOR'S REPORT

The following meetings were attended by the Director during the past month:

Inter-Agency Task Force/Board of Education

Through this Task Force, last year the Commission learned of the annual cross-burning in Lincoln Place. This year, the police were able to find and arrest the individuals responsible. The Director distributed copies of a Tribune article (Saturday), which recognized the Commission's efforts to intervene to prevent the cross-burnings.

Met with Sgt. LaVonne Bickerstaff regarding police training.

The Director stated he provided her with information regarding the involvement of youths from Westinghouse in past training sessions. Sgt. Bickerstaff indicated that the Board of Education was not aware of their involvement and she promised to follow up on this.

Annual meeting of the Pittsburgh Foundation

The emphasis of the Pittsburgh Foundation is to seek a reduction in racism and prejudice. The Director stated he hoped to solicit their support for future funding.

Community Relations Committee meeting

A community meeting was held in North Point Breeze on October 28 in an effort to solicit community input relating to the pepper spray incident of June 1997. Although fliers and door to door visits were made by staff prior to the meeting date, attendance was poor. Commissioner Smith chaired this meeting, which was also attended by Councilwoman McDonald.

Commissioner Smith felt the meeting was very informative overall and was a positive effort to improve relations. The community seems to have positive feedback, in light of the police presence and legislation which has worked to change internal procedures related to training of this nature.

Director Morrison reported that persons in the immediate area were interviewed at the time of the incident, but the October 28 meeting was an attempt to solicit additional information. A full report will be compiled and presented to the Commission soon.

The Director stated that the police claim the chemical used was "OC" which is basically cayenne pepper. The canister was submitted to the Allegheny County crime lab for analysis and has not yet been completed. He stated that the people of the community seem suspicious that an experimental chemical may have been used.

Summer Parks Values Education Program

The Director reported that he has begun working with representatives from the Board of Public Education for next year's program.

Information regarding the School Human Relations Council was distributed.

Pennsylvania Network of Unity Coalition

In April 1997 Commission staff worked with other agencies and community groups to counter the KKK march in Pittsburgh. This group is now looking at holding an annual event to celebrate Pittsburgh unity. A weeklong series of activities is planned and may culminate on Sunday, May 17. Schools may be involved in making unity banners, etc. More information will be relayed as the plans unfold.

V. NEW BUSINESS

A. Solicitor's Contract

Kevin Trower was excused from the meeting. Director Morrison stated that he recommends continuing to contract with Byrd R. Brown Law Offices, stating that Byrd is still involved with the work of the Commission and Kevin has done a good job in representing the Commission. Commissioner Vallone moved to accept the recommendation of the Director. The motion was seconded by Commissioner Board.

There was some concern that additional legal counsel may need to be provided to complainants in housing cases. The Director responded that he is working to set up separate contracts for this purpose, as the Commission may also need simultaneous representation.

Commissioner Pittinger stated that the language of the draft contract implies a relationship between the City and the attorney, not the Commission and the attorney. In such case, she was concerned that if the need arose, the Commission could not terminate the contract without the approval and permission of the City. Commissioner Kunselman agreed and suggested amending the contract to read "between the City of Pittsburgh Commission on Human Relations." Commissioner Vallone accepted this as a friendly amendment, noting that the solicitor is employed by the Commission not the City.

The motion on the floor was unanimously approved.

At this point, Commissioner Vallone asked that the meeting of the full Commission be recessed so that he could conduct a meeting of the Public Hearing Section before he lost a quorum. The Chair agreed and temporarily recessed the meeting.

VI. MEETING OF THE PUBLIC HEARING SECTION

A. Motion to Remand: Shikfo

Father Vallone, Chair of the Public Hearing Section, reported that in accordance with the Commission's Regulations, this Motion was first directed to the public hearing panel. However, as the panel had recused itself in this instance, the Motion was to be directed to the Chair of the Public Hearing Section. In this instance, Father Vallone was also a member of the hearing panel, which had recused itself. Therefore, the Motion was delivered to the Chair of the Commission for a ruling.

Commissioner Kunselman stated that based on a review of the record, his recommendation is to deny the Motion. Therefore, the case will proceed to the Court of Common Pleas, where the Respondent has an appeal pending.

Commissioner Kunselman also suggested that the Minutes be clear on the fact of the recusal, which did not imply any bias or impropriety on the part of any Commissioner or hearing panel member.

B. Hammond v. City Water Authority

Commissioner Samson served as the hearing panel in this case. Commissioners did not question the recommendation of the hearing Commissioner and voted unanimously in favor of accepting the recommendation for remedy. Staff was directed to implement the Order.

With all business concluded, the meeting of the Public Hearing Section was closed at approximately 4:45 p.m.

At this point, the meeting of the full Commission resumed.

VII. MISCELLANEOUS

A. Authority of Vice Chairs

Commissioner Fox requested clarification regarding the authority of vice chairs, which was at issue during discussion at the October Commission meeting. She reminded Commissioners that Father Vallone, as chair of the Public Hearing Section, had first placed a request for the chair of the Commission to appoint a Commissioner to review the Motion to Remand in the Slifko case, then retracted the request, noting that this was not within the purview and authority of a vice chair/acting chair. Commissioner Fox stated that Commissioner Williams had chaired the October meeting in the absence of Harry Kunselman and felt that Commissioner Williams was hurt and offended by this comment.

Following that meeting, Commissioner Fox reviewed the Commission By-laws, which simply state that the vice chair acts in absence of the chair. Without language to restrict this action, it is implied that the authority of the vice chair is the same as that of the chair.

At the last meeting, the Solicitor was asked to prepare a legal opinion on this issue. Mr. Trower distributed a detailed opinion and summarized the memo stating that according to the By-Laws, in the absence of the chair, the vice chair(s) are responsible and obligated for carrying out the duties of the chair. In absence of additional language, duties can be interpreted as ALL duties of the chair. As such, if the chair was not available and media contact was necessary, the vice chair would have the power to make that contact. Mr. Trower stated that if the Commission is not comfortable with this, they can vote to change it by amending the By-Laws.

Father Vallone asked that since the policy is to have only the chair OR director authorized speak to the media and the chair or director are absent, would the media be authorized to contact the vice chair. Mr. Trower responded negatively, stating that "not available" did not mean absent from the office, but instead was not able to be contacted, such as at trial, out of town, etc.

Commissioner Kunselman agreed with this interpretation, even though it may be ambiguous in certain circumstances. He offered to entertain a motion to change the language of the By-laws for greater clarity. Commissioners did not comment.

B. Performance Evaluation of Director

Commissioner McClenahan reported that the Personnel Committee had conducted the annual review of the Director's performance and was prepared to report to the Commission. Staff was excused from this portion of the meeting while the Commission went into Executive Session.

Following the Executive Session, the meeting was reconvened at approximately 5:00 and properly adjourned.

/cmz

PITTSBURGH COMMISSION ON HUMAN RELATIONS
A G E N D A
November 3, 1997

I. CALL TO ORDER

II. ADOPTION OF MINUTES

III. PRESENTATION BY UNIVERSITY OF PITTSBURGH IRB

IV. GUEST SPEAKER: SALA UDIN, MEMBER OF CITY COUNCIL

V. STAFF & COMMITTEE REPORTS

A. Compliance Update

B. Director's Report

V. NEW BUSINESS

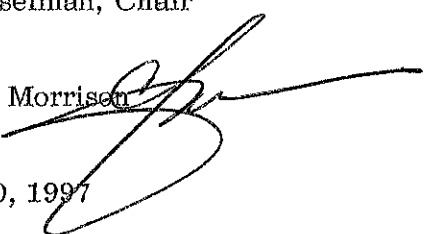
A. Solicitor's Contract

/cmz

MEMORANDUM

TO: Public Hearing Section Commissioners
Dr. George Board
Pamela Golden
Johnnie B. Grice
Robert C. McClenahan
Rev. William Morgan
Father Lou Vallone

CC: B.J. Samson
Harry Kunselman, Chair

FROM: Charles F. Morrison
Director 

DATE: October 30, 1997

SUBJECT: MEETING NOTICE

The Public Hearing Section will meet immediately following the full Commission meeting on Monday, November 3, 1997. One of the items to be discussed at that time is the Final Order in the case of Hammond v. the City Water Department. Enclosed is a copy for your review.

If you will not be able to attend this meeting, please call Connie Zatek at 255-2600.

/cmz

Enclosure

COMMISSION ON HUMAN RELATIONS
CITY OF PITTSBURGH

MICHAEL D. HAMMOND,	:	
	:	
Complainant,	:	
	:	NO. EO-92-153
v.	:	
	:	
WATER DEPARTMENT, CITY OF	:	
PITTSBURGH,	:	
	:	
Respondent.	:	

SUPPLEMENTAL FINDINGS OF FACT AND FINAL ORDER

Following public hearing on June 8, 1996, the Commission issued a Decision, Findings of Fact and Order, incorporated herein, determining that Respondent discriminated against Complainant on the basis of race in violation of the Pittsburgh City Code, Chapter 659.02, in failing to promote Complainant to the position of Acting Foreman and further, that Respondent retaliated against Complainant for filing a complaint with this Commission.

On October 2, 1996, a public hearing was held on the issue of damages, with both parties being represented by counsel. As a result of the foregoing, the Commission enters the following Supplemental Finding of Facts and Final Order.

1. The Commission received evidence in the form of detailed billing statements for attorney fees and costs incurred directly related to representation of Complainant in this matter. (Tr., pp. 19-23, Complainant's Memorandum in Support of Damages)

2. The Commission finds as credible Complainant's

recollection of the hearing billing rate between himself and his counsel to be \$120.00 per hour and not the rate of \$195.00 per hour indicated on counsel's submitted billing statements. (Tr., pg. 20-21)

3. The Commission finds Complainant's counsel's request for costs in the amount of \$530.00 to be reasonable.

4. The Commission received evidence of Complainant's damages. (Tr., pg. 1-60, Complaint Damage Exhibit 1, 2)

5. The Commission finds that during the period April 16, 1990 through April 2, 1997 Complainant was available to work as acting foreman 8 times of the 18 times Respondent called Complainant to act as such, with Plaintiff being there by available to act as foreman 44% of the times he was called. (Respondent's Damages Exhibit No. 2)

6. The Commission finds that during the period of 1992-1996 Complainant's co-worker fellow pipeman Niedzwiecki, received the most calls by Respondent to act as foreman. (Complainant's damages Exhibit No. 2), being called:

74 opportunities in 1992
44 opportunities in 1993
43 opportunities in 1994
10 opportunities in 1995
11 opportunities in 1996
(Complainant's Damages Exhibit 2)

FINAL ORDER

The Pittsburgh Commission on Human Relations having held public hearing on the above-referenced matter on June 8, 1996 and having issued an Order finding that Respondent did intentionally discriminate against Complainant both on the basis of race and by retaliation in violation of Section 659 et seq. of the Pittsburgh City Code (hereinafter "the Code") and, further, having held public hearing on October 2, 1996, on the issue of damages, hereby orders that Respondent immediately cease retaliation against Complainant and that Respondent forthwith comply with all provisions of the Pittsburgh City Code, Section 659 et seq. prohibiting unlawful employment practices.

IT IS FURTHER ORDERED, that Respondent shall, no later than 90 days from date of this Order, develop, and submit to this Commission, for its approval, a policy and procedures to insure appointment of persons to the Acting Foreman position in a fair, equitable and non discriminatory manner. Once approved by this Commission, copies of said policy and procedures shall be disseminated to all persons eligible for appointment to the Acting Foreman Position and shall also be posted prominently in locations where it can be viewed by these same persons.

IT IS FURTHER ORDERED, that Respondent shall submit a quarterly report to this Commission which shall include the names of all persons eligible to be appointed to the Acting Foreman

positions, all actual appointments to the Acting Foreman Positions made by Respondent and the dates of said appointments during the quarter, the name of the employee who was appointed, and the total number of times in the quarter that each eligible employee was appointed. Said compliance report shall be provided to the Commission for a period of two years commencing on the date of this Order.

IT IS FURTHER ORDERED, that Respondent pay to Complainant back pay in the amount of \$15,091.85, representing the amount of compensation Complainant would have received during the period 1992-1996 (and interest of 6%), if he been called to act as foreman and was accorded equal opportunities to act as such as his co-worker Niedzwiecki, was given, and if Complainant had been available to act as such pursuant to his historic work pattern with Respondent, when called to act as such, prior to Respondent's discriminatory acts.

IT IS FURTHER ORDERED, that Respondent pay to Complainant's counsel the amount of \$9,432.00, representing attorney fees at the hourly rate of \$120.00 per hour for 78.60 hours of work and costs of \$530.00.

This Commission shall maintain jurisdiction in this matter for the purpose of compliance.

FOR THE COMMISSION

Commissioner