

PITTSBURGH COMMISSION ON HUMAN RELATIONS

Minutes of Meeting

November 1, 2010

Attendance: Adelaide Smith, *Chairperson*

Leah Williams-Duncan
Rev. Tim Smith
Winford Craig
Dr. Lee Fogarty
Gerald Robinson, III

Lynette Drawn-Williamson
Curtis A. Smith
Mary K. McDonald
Eric Horwith
Neil Parham

Called/Unable to Attend: Amanda Rubio
Beth Pittinger

Anne McCafferty

Absent: Dr. Lorraine Eberhardt

Staff: Charles Morrison, *Director*
W. Kevin Trower, *Solicitor*

Connie Miskis Zatek

I. CALL TO ORDER

Chairperson Adelaide Smith called the meeting to order at 3:35 p.m.

II. ADOPTION OF MINUTES

The Minutes of the October 4, 2010, Commission meeting were unanimously adopted as circulated, upon motion of Commissioner Williams-Duncan and second by Commissioner Craig.

III. STAFF & COMMITTEE REPORTS

A. Compliance Update

Director Morrison reported that the new federal fiscal year began October 1, 2010. The new EEOC contract is not yet in place, but generally is finalized by mid-February or March. He anticipated that it will be very similar to this past year which required the processing of 74 cases. The Commission has submitted 12 cases to the EEOC to date for the new contract year (FY11).

The Director reported that the contract with HUD is a multi-year contract and the Commission has recently undergone re-certification which will be good for five years.

B. Director's Report

The City's 2011 operating budget will be presented on November 8. Director Morrison reported that he will be working with the Budget Office and the Department of City Planning/Community Development to fund a position within the Commission which will continue its efforts in education and outreach in the area of housing. The Director explained that many organizations throughout the city meet on a monthly basis but the Commission has not had staff to attend these meetings where concerns and issues are first raised. He expressed the hope to employ someone who has an interest in this type of work.

The Director explained that Community Development Block Grant (CDBG) funding is earmarked for improving conditions in neighborhoods deemed CDBG eligible. Approximately 56% of Pittsburgh neighborhoods are currently eligible. Such development takes place through allocation of money through the Urban Redevelopment Authority. The URA receives approximately \$9 million a year from a \$20 million appropriation.

Chairperson Smith noted that she has the impression that since the CDBG was established, its focus has been mostly on urban redevelopment, economic development and community development, but has little to do with housing. She said that she didn't feel that it had significant impact as far as housing is concerned.

The Director agreed that there are some overhead and administrative expenses, as well as specific guidelines for HUD programs. The Commission's piece is anything related to fair housing; whether it occurs in a CDBG eligible area or not, it is still an eligible expense via CDBG. The fair housing program through HUD requires the City to affirmatively further fair housing and establish an action plan every five years. He explained that the money the Commission receives comes as reimbursement to the City's general fund for expenses related to salaries. "There is no money in our CDBG allocation for advertising, etc., but we have money in the HUD Trust Fund to do outreach, etc." Director Morrison stated that the Commission can encourage the City to use part of its allocation to do things such as testing and promotion of fair housing programs, but, "because the money that comes to the Commission is to reimburse salaries, we have not been able to spend it down."

The Director explained further that fair housing is a fraction of the Commission's work – about 15-20% of the case inventory. The vast majority of the Commission's work is in the area of employment.

Director Morrison briefly noted that following a very critical HUD review several years ago, the Commission has been held to a very high standard with regard to its housing investigations and documentation. The requirement has

been challenging and resulted in a diversion of time and energy for more stringent record-keeping. This is part of the rationale for creating a position for a new employee as a housing specialist.

The Director noted that the current part-time outreach worker has yet to bring in one complaint. Her goal was to reach out to the Spanish population of Pittsburgh. According to this employee, one problem is the legal status of undocumented residents: they feel that they cannot file a complaint for fear of being deported. Director Morrison reported that HUD's position is that undocumented persons cannot file, whereas EEOC has made the opposite determination. He stated that a person's identity can be protected through the use of a Commission-initiated complaint, but believes that it will be hard to protect someone's identity in an individual (versus class) case.

Solicitor Trower agreed that the "first person to come after an undocumented person would be the respondent."

Chairperson Adelaide Smith noted that this employee has been nominated for the Board of Directors of the Thomas Merton Center.

The Director noted that although this employee has been working with the Latino community since the end of January 2010, the Commission has not received one call or one complaint. "We have not heard from the folks we met with one year ago, either." (re: representatives of the Spanish community) Director Morrison reported that while this employee has made contact with the leaders in that community and has established a presence at the community center at least one day a month, his goal is that she is there one day a week. He also noted that Sister Janice, a key supporter, has recently left the Pittsburgh area. Contact has been established with all known leaders of the Latino community.

C. Committee Assignments

Chairperson Adelaide Smith noted that she had not received any comments or requests for change regarding the proposed Committee Assignments distributed at the October Commission meeting. Therefore, those Assignments will be considered final.

IV. **MINI-TRAINING: Exceptions to Discrimination Law**

Solicitor Trower presented a brief overview of exceptions "built into discrimination laws." He noted that certain categories are not part of the Commission's jurisdiction and therefore cannot be enforced. Respondents may translate this into "I can do what I want." He attributed this to political cowardice. He went on to note that this Commission has a one-year statute of limitations, while the state and county commissions have 180 days. Complainants may be awarded compensatory damages only (out-of-pocket expenses); there is no relief for duress or punitive damages.

Solicitor Trower stated that it is interesting to note that discrimination law has the shortest statute of limitations in the Commonwealth and limited ability to recover damages, which shows how serious lawmakers are about discrimination.

Companies with fewer than five employees are exempt from the Commission's jurisdiction. However, he noted that technologies have expanded over the years to allow companies to outsource services by contract and in doing so enable them to skirt the law by having fewer than five "employees."

Religious and charitable organizations have enjoyed exemption, too, along long as they do not accept government funding. They are exempted from no other laws except those involving discrimination. Solicitor Trower noted that the law would not have been passed if this exemption was not included.

Mr. Trower briefly discussed the "money trap," noting that many exempt agencies may administer funds for other, smaller entities such as the Boy Scouts. However, it has been determined "if you touch it, they (the administering agency) are supported by it and they lose their exemption status." The Solicitor cautioned Commissioners to be alert to potential liability, noting for instance that if they serve on a church or organizational board which loses its exempt status, they may also be liable.

The Solicitor related an experience while attending a legal conference. He stated that on the other side of a divided conference room real estate representatives were instructing employees on how to avoid certain law suits. They called it "up & out" explaining that a good way to get rid of an unwanted employee is to push him or her up (promote) before they are ready so that they could ultimately fail. The instructors claimed that such behavior would be hard pressed to prove discrimination.

Solicitor Trower stressed that the time will come when changes can be made and encouraged the Commissioners to speak up and work to do away with some of these kinds of exemptions. He reiterated that religious and charitable organizations are "huge. They can discriminate in hiring, housing and public accommodations; they don't have to worry about the City Code."

The Solicitor posed the question, "What is a non-sectarian organization?" and provided an answer, saying that essentially any organization can fit the definition if they do not accept government funding. Commissioner McDonald inquired if a nursing home might be determined to be receiving government funding if one of its residents receives a government check and uses it for nursing home fees and services. The Solicitor responded that the question then might be who is getting the money? There is bare minimum of case law on this subject.

Commissioner Adelaide Smith asked if changes to the law may come through test cases or through the legislature. Mr. Trower replied that changes made through cases chip away bit by bit; the legislature is the best opportunity for change. Commissioner Smith asked if a discrimination suit is filed, can those agencies used for outsourcing also be

considered part of the case? Mr. Trower stated that it is possible, if an argument can be made to question how a particular business can maintain operations with only five (or fewer) employees? This would be a test to uses of outsourced services by a respondent, but the burden remains on the complainant to prove otherwise. He stated that changes in the law hinge on realizing that there are different economic models today.

Commissioner Smith asked if persons who were victims of church pedophile issues can help to change the discrimination laws. The Solicitor responded that he was not aware of any such cases, stating that those cases were matters of criminal law, not civil law. He reiterated that the statute of limitations in discrimination law is six months to one year. The clock starts when you know, or reasonably should have known, that you have been a victim of discrimination. The problem in pedophile cases is that the incident occurs when the person is a minor and not aware of his or her situation, and it may take years for the person to find the strength to come forward to report the incident.

Solicitor stressed that "the first thing we need to do if discrimination is important is to lengthen the statute of limitations." He informed Commissioners that laws involving fraud have a six year statute of limitations; breach of contract is four years; personal injury is two years; defamation is one year, while discrimination in Allegheny County and the state is six months. (This Commission's statute is one year.) He speculated that necessary change might only come on the heels of a city Council person with courage. "If the goal is to protect citizens and businesses from discrimination, we must be aware of the opportunity [for change] when it strikes."

Mr. Trower went on to remind the Commissioners that this Commission has been on the "cutting edge" particularly with regard to protections offered on the basis of sexual orientation and gender identification. That law was first passed by Pittsburgh City Council in 1990, and is only very recently being considered by many other cities and states. Director Morrison interjected that the Commission was already well-established in the 1950's while the federal civil rights laws were not passed until ten years later.

Commissioner Parham asked the Solicitor what his advice might be with a case that falls under one of the discussed exceptions. Solicitor Trower responded that most "attacks" come in the form of a motion on the issue of jurisdiction. Motions are reviewed and considered by the Motions Commissioner. He would suggest following the money trail. If the facts and rationale of the Commission Order are not solid and clear, a Commission order can be overturned on appeal. "The goal is to make the Commission's ruling stick. The Commission has not been reversed on appeal since 1977."

Commissioner McDonald noted that there is no definition of sectarian in the law. Mr. Trower agreed, stating that is part of the problem. "We need to include specific definitions."

V. ADJOURNMENT

With all business before the Commission concluded, the Chairperson entertained a motion to adjourn the meeting. The motion was put forth by Commissioner Parham, seconded by Commissioner Drawn-Williamson and carried unanimously. The meeting adjourned at 4:38 p.m.

/cmz