

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COMMISSION ON HUMAN RIGHTS
(TEXAS WORKFORCE COMMISSION - CIVIL RIGHTS DIVISION)
AUSTIN, TEXAS

PUBLIC MEETING FOR THE)
COMMISSION ON HUMAN RIGHTS)
TEXAS WORKFORCE COMMISSION)
CIVIL RIGHTS DIVISION)

COMMISSION MEETING
WEDNESDAY, JANUARY 18, 2012

BE IT REMEMBERED THAT at 9:06 a.m., on Wednesday, the 18th day of January 2012, the above-entitled matters came on for hearing at the Texas Workforce Commission, TWC Building, 101 East 15th Street, Room 244, Austin, Texas, before CHAIRMAN ANDERSON and the COMMISSIONERS of the Human Rights Commission, Texas Workforce Commission - Civil Rights Division; and the following proceedings were reported by Aloma J. Kennedy, a Certified Shorthand Reporter in the State of Texas.

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1 P R O C E E D I N G S

2 WEDNESDAY, JANUARY 18, 2012

3 (9:06 a.m.)

4 AGENDA ITEM NO. 1

5 CHAIRMAN ANDERSON: Good morning everyone,
6 and welcome to the January 18th meeting of the
7 Commission on Human Rights. It's 9:06, and we'll go
8 ahead and begin. We welcome everyone to the meeting.

9 AGENDA ITEM NO. 2

10 CHAIRMAN ANDERSON: And we do have one
11 individual who would like to speak, Marilou Morrison of
12 Austin, Texas.

13 Ms. Morrison, you have three minutes.
14 Please keep it on topic.

15 MS. MORRISON: Good morning and happy new
16 year. I come to offer my best wishes of assistance to
17 CRD staff interested in making a last-ditch effort to
18 save the CRD. Please feel free to call me at 343.1397.
19 Some already have.

20 Very few employees are actually unable to
21 do the work, and most are well aware of the reasons for
22 the problems. The employment questionnaire is an
23 embarrassment. Complainants are urged to contact EEOC
24 directly to file complaints. Employment case inventory
25 is low, too low to justify the current number of

1 employment investigators. The EEOC has found cause in
2 an additional discrimination complaints filing at Texas
3 agencies. Is it any wonder that state agencies do not
4 want training from the Commission? This results in
5 expenses for positions designated as, quote, trainers/
6 monitors, end quote, to be a total waste of taxpayer
7 funds.

8 Numerous complaints and grievances have
9 been filed by current and former CRD employees. This is
10 due to managers' lack of knowledge and ability to train
11 and assist and still receive raises and a bonus.
12 Incompetence is rewarded. This apparently demonstrates
13 the current level of interest and commitment to fair
14 housing and employment practices in Texas, but this will
15 change.

16 In the meanwhile, the CRD will have to
17 come up with the money for the record-setting judgment
18 owed because of this manager and then commissioners'
19 total regard and/or lack of minimal knowledge of EEO and
20 HUD laws.

21 Happy new year.

22 AGENDA ITEM NO. 3

23 CHAIRMAN ANDERSON: Okay. Item No. 3,
24 discussion, consideration and possible action regarding
25 activities conducted for the first quarter of Fiscal

1 Year 2012.

2 Mr. Babiak.

3 MR. BABIAK: Good morning, Chair Anderson,
4 Commissioners, guests and staff. I'm Jonathan Babiak,
5 Division Director, Civil Rights Division.

6 Since our last meeting, we have been
7 extremely busy. The vast majority of my time has been
8 spent working on operations with my managers, Vickie and
9 Janet. I have participated in several case staffings on
10 the housing side. This has been very helpful for staff
11 in understanding cases that are in process. In
12 addition, we have begun to have case staffings on cases
13 at the beginning stage to ensure that the investigations
14 proceed properly.

15 I have attended routine weekly TWC
16 executive staff meetings and the quarterly TWC
17 performance measures briefing. I participated in a
18 panel presentation to a delegation from China. The
19 delegation was arranged through a member of the
20 Legislature. And we explained to the members of the
21 delegation, we provided an overview of our TWC programs.

22 Accompanied by Janet Quesnel, I attended
23 the annual Texas Workforce conference in Houston. Janet
24 and I staffed a booth to promote our training.

25 I have been participating in an ongoing

1 task with staff and TWC Governmental Relations. One
2 directive that came out of the legislative session this
3 year was for state agencies to examine reports that they
4 issue and reports that they receive to determine if all
5 of these reports are still necessary and useful. There
6 was a workgroup, I think several years ago, in 2007,
7 that examined various reporting requirements related to
8 equal employment opportunity policies.

9 Each state agency has what is known as an
10 enabling statute. It is the statutory authority for the
11 existence of the agency and an overview of the agency's
12 structuring governance. Many enabling statutes include
13 a provision for the agency to create and revise equal
14 employment opportunity personnel policies and to submit
15 them annually to CRD for review. Staff in Governmental
16 Relations tells me that this common provision arises out
17 of an across-the-board recommendation from many years
18 ago that was part of the sunset review process.

19 State agencies are subject to sunset
20 review. An across-the-board recommendation is a
21 recommendation that the staff of the agency makes to the
22 Legislative Commission in every review. An example is
23 the current complaint processing policy that we have at
24 TWC. It arose out of our sunset review in 2003 in
25 Senate Bill 280, and that was at the time an across-

1 the-board recommendation. It was recommended in every
2 sunset review. The EEO policy provisions in the
3 enabling statutes are believed to have arisen out of a
4 similar across-the-board recommendation.

5 In 1999, the Legislature created policy
6 review administered by CRD. We'll have training on that
7 later in today's meeting. And I'm working with staff in
8 Governmental Relations to determine if we have any
9 recommendations to sunset on any legislation that would
10 help clarify what appear to be redundant or maybe
11 inconsistent provisions in the statute. And, in fact,
12 I'll be going with Janet at 2 o'clock this afternoon to
13 meet with staff in Governmental Relations to discuss
14 this further.

15 I was asked by staff in Regulatory
16 Integrity Division, Equal Opportunity, to participate in
17 an informational session on some proposed rulemaking.
18 TWC is a federal contractor in connection with many of
19 our programs. Federal contractors are subject to equal
20 employment opportunity provisions and personnel
21 policies. And this notice of proposed rulemaking
22 relates to the disability provisions of the federal
23 contractor requirements. I didn't have any direct role.
24 I was there merely to assist staff in Regulatory
25 Integrity.

1 I attended a webinar on fair lending
2 issues. There was no new information out of that
3 webinar that we were not already aware of.

4 I have now completed the Governor's
5 Executive Development Program. I was honored and
6 humbled to have been selected. It is an intensive
7 three-week training program. There were approximately
8 60 people in the class, including two other TWC
9 employees: One, Lona Chastain, Director of Open
10 Records, and also Lisa Givens, Director of
11 Communications.

12 The training was intense, gives you a lot
13 to think about. The broad subject is leadership
14 development. And some of the concepts are very simple
15 in theory and yet very challenging to implement. As an
16 example, one of the presentations was simply on the
17 subject of "Leaders, Listen," and I am continuing in my
18 efforts to implement what I've learned in that seminar.

19 Vickie and I attended training presented
20 by the Texas Department of Housing and Community
21 Affairs, to gain a better understanding of their
22 programs. We are working on revising a memorandum of
23 understanding that would provide for Texas Department of
24 Housing and Community Affairs to refer fair housing
25 cases to us when they arise.

1 Finally, I attended a meeting sponsored by
2 Texas Department of Housing and Community Affairs
3 concerning an analysis of impediments. The State of
4 Texas is required to prepare an analysis of impediments
5 in connection with other programs administered by HUD.

6 That concludes my prepared remarks for
7 Agenda Item 3, and I'm available to answer any questions
8 that you have.

9 AGENDA ITEM NO. 4

10 CHAIRMAN ANDERSON: Seeing none, we'll
11 move on to Item No. 4, discussion, consideration and
12 possible action regarding quarterly report concerning
13 the budget for the first quarter of Fiscal Year 2012.

14 Daryl and Jonathan.

15 MR. BABIAK: Okay. We are at the slide,
16 Expenditures by Category. I would like to draw your
17 attention to the column on the right, the 2012 total.
18 The bottom number gives our total expended, and this is
19 upon completion of 25 percent of the year. This covers
20 September, October, November. So that is the amount
21 that we have expended for the first three months.

22 CHAIRMAN ANDERSON: And is that on pace
23 through -- 25 percent of the year is gone. Is that
24 25 percent of the expenditures for the budgeted year?

25 MR. STEGLICH: It's a little less than

1 25 percent of the expenditures. However, being the
2 first quarter, they're -- the expenditures throughout
3 the year are not necessarily linear.

4 Jonathan, I believe you have a vacancy
5 that's expressed in the salary number being a little
6 low.

7 MR. BABIAK: We did have a vacancy for
8 September through November. That vacancy was filled
9 effective December 5.

10 CHAIRMAN ANDERSON: Is that investigator
11 or some other position?

12 MR. BABIAK: It is an intake investigator
13 on the employment side.

14 CHAIRMAN ANDERSON: Okay.

15 MR. BABIAK: Moving to the next slide --

16 CHAIRMAN ANDERSON: Do you have the
17 numbers for December? I mean, you don't have them here,
18 but are they in line?

19 MR. BABIAK: I received the report
20 yesterday from Jim Dixon in Budget. Through the end of
21 December, we have completed 33 percent of the year, and
22 we have completed 32 percent of the housing cases and
23 31 percent of the employment cases. We are slightly
24 behind, and we are taking action to address that.

25 CHAIRMAN ANDERSON: Okay.

1 MR. BABIAK: Okay. Moving to the Slide 4,
2 our 2012 cases, on housing we have completed 80 out of
3 385 budgeted cases, and that is slightly behind. And on
4 the employment side, we have completed 276 out of 1,030
5 budgeted employment cases. Again, that is slightly
6 behind, and we are already taking action to address
7 that.

8 Moving to our next slide, Total Revenue
9 versus Expenditure, at this point we have expended about
10 \$556,000, which is about 20 percent of what we expect to
11 expend. And on a straight line projection, we will
12 expend about 84 percent. We fully expect, as we proceed
13 through the year, to expend close to 100 percent.

14 Continuing to the next slide, the next
15 slide is a subset of the slide immediately prior. From
16 total revenue versus expenditure, we have two major
17 categories, non-GR-supported and GR-supported, which
18 together make up the total. So now we're moving to the
19 portion that is non-GR-supported. And this is our HUD
20 revenue and expenditure.

21 And as you can see, we are right now,
22 because we are behind on our case production, we are
23 also behind on our projected revenue for the end of the
24 year. We are also behind on a straight line projection
25 on expenditures, and we are addressing that.

1 CHAIRMAN ANDERSON: What specifically are
2 you doing to address these shortfalls?

3 MR. BABIAK: We are having staff work
4 extra hours.

5 CHAIRMAN ANDERSON: Okay. So that's extra
6 cost also?

7 MR. BABIAK: Well, yes, because we're not
8 expending the funds proportionately to the beginning of
9 the year, so we are trying to catch up on spending those
10 funds and, to do that, having staff work the extra
11 hours.

12 CHAIRMAN ANDERSON: Okay.

13 MR. BABIAK: Our next slide is our
14 GR-supported revenue. The other are of the total, and
15 this is our EEOC and training and monitoring activities.
16 So far we have expended about 23 percent; we are on pace
17 to expend 88 percent. And again, we are having staff
18 work extra hours to address that and get it back on
19 pace.

20 The next slide is the EEOC component of
21 the GR-supported revenue. Again, for the first three
22 months, we are slightly behind pace.

23 Our next slide is our training and
24 monitoring activities. On this activity, we are pretty
25 much on pace for the first three months of the year.

1 And, finally, the GR component of our
2 GR-supported activities. And again on this, we are on
3 pace for the first three months of the year.

4 I believe that my materials have a
5 duplicate page. That should be the end of the budget
6 materials. If you have one more page with budget
7 information, it is probably a duplicate, and I apologize
8 for that.

9 That concludes our presentation on this
10 agenda item. We're available if you have any questions.

11 CHAIRMAN ANDERSON: How quickly do you get
12 reimbursed from the time you invoice HUD or EEOC, to
13 receiving funds?

14 MR. STEGLICH: On the HUD portion, that's
15 based on a program year, which is July 1 to June 30th,
16 and it's in arrears, so to speak. We'll bill HUD for
17 that particular performance generally around this time
18 of the year, and we'll get reimbursed for that, that
19 production at that period of time.

20 For EEOC, it's based on a federal fiscal
21 year, which is October 1st to September 30th. The
22 contract itself, the first draw, if memory serves me
23 correctly -- and Vickie may be able to give a better --
24 may be able to correct me. I think the first billing
25 date is April.

1 Now, from a cash flow standpoint, TWC
2 takes care of the cash flow for those particular ones.
3 The main thing that we focus on from a practical
4 standpoint is the production. If we've got the
5 production, then the cash flow, it's a timing issue, and
6 it's not something that we worry so much about, because
7 the cash will eventually be there.

8 CHAIRMAN ANDERSON: Okay. So was December
9 typically a slow month, because of the holidays and
10 things like that, or is that a time where you can
11 actually pick up, because they're slow with cases maybe
12 coming in or something?

13 MR. BABIAK: During December, I think that
14 on the housing side, we had a very good month; on the
15 employment side, we did not have a good month. And I
16 can only explain it as simply the variation in
17 individual cases. There are some months when you simply
18 don't close a lot of cases; in other months, you get a
19 greater number of closures.

20 COMM. DIGGS: The person that we hired is
21 in which area? Can you tell me?

22 MR. BABIAK: The person who began on
23 December 5 is working in the employment discrimination
24 side, reporting to Janet, classified as Investigator II
25 and performing intake duties on employment

1 discrimination complainants.

2 COMM. DIGGS: Okay. All right. Thank
3 you.

4 CHAIRMAN ANDERSON: Anything else from any
5 Commissioners?

6 (No response)

7 CHAIRMAN ANDERSON: Okay.

8 AGENDA ITEM NO. 5

9 CHAIRMAN ANDERSON: Item No. 5 is
10 discussion, consideration and possible action regarding
11 quarterly report concerning employment enforcement and
12 training, monitoring activities.

13 Ms. Quesnel.

14 MS. QUESNEL: Good morning, Chair
15 Anderson, Commissioners, guests and staff. My name is
16 Janet Quesnel. I am the Manager of Employment
17 Investigations and Training and Monitoring.

18 Employment had 205 cases filed the first
19 quarter, 276 resolved, and ended with an inventory of
20 261. In September, we closed 105 cases; in October, 84;
21 in November, 87. We're supposed to be at 25 percent; we
22 are at 26.8 at that point.

23 71.7 percent of those were no cause. 22.5
24 percent were filed under disability, 31.5 under age, and
25 46 percent under Title VII. The age of the pending

1 employment cases shows the number of cases -- I'm sorry.
2 excuse me a second -- shows 3.3 percent over 300 days in
3 the first quarter compared to last year's 8 percent for
4 the first quarter.

5 EEO and housing training presentations
6 conducted during the quarter was one. I do want to let
7 you know that we are in the process of working revisions
8 to the training and monitoring processes so we can
9 improve the product to our clients.

10 In regard to reviews in the first quarter,
11 we conducted four on-sites, with two being certified.
12 No firefighter reviews were conducted in the first
13 quarter; however, we have conducted reviews since that
14 time and are on schedule to complete the reviews planned
15 for the year.

16 And that's all I have. Any questions?

17 CHAIRMAN ANDERSON: Is there any
18 significance to the increase in the age of the pending
19 cases, up to 2.5 percent, or is that just a reflection
20 of the fact that we're not closing some of the cases as
21 quickly?

22 MS. QUESNEL: Only. The aging cases?

23 CHAIRMAN ANDERSON: Yes, the aging
24 cases --

25 MS. QUESNEL: Okay. This quarter it

1 was --

2 CHAIRMAN ANDERSON: -- compared to
3 previous years.

4 MS. QUESNEL: Right. It's the inventory
5 situation with the employee staffing and missing person
6 and --

7 CHAIRMAN ANDERSON: We're short an
8 investigator?

9 MR. BABIAK: In the first quarter,
10 September to October, I believe we were fully staffed.
11 We do have one investigator out on extended leave right
12 now.

13 And, Janet, help me out. Did that
14 extended leave begin before the end of October?

15 MS. QUESNEL: No, sir. I think it --

16 MR. BABIAK: Chair Anderson, to address
17 your question, I can only explain that the difference in
18 the current 2.5 percent cases over 365 days compared to
19 one year ago at one percent is three cases.

20 CHAIRMAN ANDERSON: The case load is down
21 considerably. Is that a reflection of EEO or is that a
22 reflection of the fact that we've got less investigators
23 and more in housing now?

24 MS. QUESNEL: Since we had only one intake
25 investigator for part of the period, the inventory has

1 been low, because the production of charges was down.
2 We have got our new intake investigator, and we're
3 expecting that to correct that problem.

4 MR. BABIAK: The new employee has become
5 productive very quickly. And I believe that at our next
6 meeting, we will see a substantial improvement because
7 of the improved performance in our intake area.

8 CHAIRMAN ANDERSON: Okay.

9 MS. QUESNEL: Thank you.

10 CHAIRMAN ANDERSON: Any questions?

11 (No response)

12 AGENDA ITEM NO. 6

13 CHAIRMAN ANDERSON: All right. Item No.
14 6, discussion, consideration and possible action
15 regarding the quarterly report regarding housing
16 enforcement and alternative dispute resolution, outreach
17 activities for Fiscal Year 2012.

18 Ms. Covington.

19 MS. COVINGTON: Good morning,
20 Commissioners, TWC staff and guests. For the record, my
21 name is Vickie Covington, Manager, Investigations,
22 Team 1, Outreach and ADR.

23 Our ADR staff resolved 52 cases.
24 Complainants received more than \$400,000 in individual
25 relief. And we have shared two scenarios with you in

1 your booklets. Those scenarios can be located behind
2 the ADR tab. Please note both scenarios include both
3 monetary and non-monetary relief.

4 Are there any questions?

5 (No response)

6 MS. COVINGTON: Next slide.

7 As Jonathan stated earlier, we are
8 slightly behind in our FY2012 budgeted resolutions.
9 Right now we're at 22.4 percent. We are working
10 diligently to make up the difference over the next
11 quarter.

12 Are there any questions?

13 COMM. DIGGS: What would you attribute
14 that to, just the off month, or is there something else
15 that you watch for?

16 MS. COVINGTON: If you wouldn't mind,
17 Commissioner Diggs, I'll respond to that when we get to
18 the aged cases line.

19 What I would like to point out, on the
20 type of closures for the housing cases, more than
21 61 percent resulted in a favorable resolution to the
22 complainants. And if you look at the withdrawal with
23 settlement category, as well as the conciliation
24 category, those two categories comprise the highest
25 types of our resolutions.

1 Complainants received monetary relief as
2 well as non-monetary relief. Some of the non-monetary
3 relief consisted of changes respondents made to their
4 policies and procedures, access to the housing that they
5 desired and approving requests for reasonable
6 accommodations and reasonable modifications that were
7 necessary to afford disabled residents the equal
8 opportunity to use and enjoy their dwelling.

9 Are there any questions?

10 (No response)

11 MS. COVINGTON: We've also shared a couple
12 of scenarios about housing cases, in your binders, and
13 those can be located behind the housing tab.

14 CHAIRMAN ANDERSON: Conciliation does
15 not -- 80 hours is not involved with conciliation under
16 housing, so this is just what the investigators --

17 MS. COVINGTON: Yes, Chair.

18 CHAIRMAN ANDERSON: Okay. So it's just
19 the investigators one-on-one or whatever with the
20 respondent --

21 MS. COVINGTON: That's --

22 CHAIRMAN ANDERSON: -- with the
23 complaining party?

24 MS. COVINGTON: Or their representatives.

25 CHAIRMAN ANDERSON: Okay.

1 MS. COVINGTON: Are there any other
2 questions?

3 (No response)

4 MS. COVINGTON: The aged cases for housing
5 continue to be our priority. And as our new
6 investigative staff become more proficient in conducting
7 housing investigations that lead to resolutions, we
8 anticipate decreasing the percentage of aged cases. As
9 you'll recall, we hired four housing investigators last
10 fiscal year. And I believe next month, the last two
11 will be coming out of their learning curve.

12 And just for information, over the last
13 four years, our new case intake has increased by
14 40 percent, from 248 cases for Fiscal Year 2007, to 413
15 for Fiscal Year 2011. Last year alone, we had a
16 17 percent increase. And as you're aware, we've been
17 very proactive in increasing the number of fair housing
18 investigators and fair housing staff, and we've tried to
19 stay ahead of the aging cases.

20 And so we also know that staff turnover is
21 unavoidable. And when we fill the new positions as they
22 become vacant, the new staff have long learning curves,
23 simply because of the complexity of the fair housing
24 investigations.

25 Are there any questions?

1 (No response)

2 MS. COVINGTON: We participated, along
3 with our other Region 6 partners -- and those include
4 Arkansas, Louisiana, New Mexico and Oklahoma -- in the
5 Fort Worth regional fair housing training. It was
6 conducted September 14 through 16 as well.

7 And as Jonathan stated earlier, we also
8 met with TDHCA officials who shared with us some of
9 their housing programs. We provided a brief overview of
10 our programs, to include our fair housing program, and
11 afterwards we collaborated on future fair housing
12 training to be presented to their staff. And we
13 actually conducted that training, and we'll share more
14 about that with you at our next meeting.

15 Are there any questions?

16 (No response)

17 CHAIRMAN ANDERSON: Seeing none, thank
18 you.

19 MS. COVINGTON: Thank you.

20 AGENDA ITEM NO. 7

21 CHAIRMAN ANDERSON: Who is going to take
22 this one, No. 7?

23 MR. BABIAK: Commissioners, I can hear
24 Janet behind me is coughing. And rather than make her
25 present to you, I will take over on Agenda Item No. 7,

1 discussion, consideration and possible action regarding
2 the annual report pursuant to Texas Labor Code, Sections
3 21.504 and 301.156.

4 In your materials at the tab for annual
5 report, you will find the draft we have prepared of the
6 annual report. I don't believe that there is anything
7 significant to point out to you in the report. We are
8 seeking your approval to issue the report, reserving the
9 ability to make any non-substantive changes to the
10 narrative to conform it to TWC communication standards.

11 And that's my prepared remarks. Do you
12 have any questions?

13 COMM. STIDVENT: Do you need us to sign
14 this document at today's meeting or are we going to
15 submit our signatures later?

16 MR. BABIAK: Commissioner, we have your
17 electronic signature. The action that you take at the
18 meeting can be used as a basis for placing your
19 signature on the report, and we will not need an actual
20 signature.

21 CHAIRMAN ANDERSON: Okay. Do we need a
22 motion for this?

23 Okay. Do I hear a motion to approve the
24 annual report in a report pursuant to Texas Labor Code,
25 Section 21.504 and 301.156?

1 COMM. MICHALKA: So moved.

2 CHAIRMAN ANDERSON: So moved by
3 Commissioner Michalka. Do I hear a second?

4 COMM. STIDVENT: Second.

5 CHAIRMAN ANDERSON: Seconded by
6 Commissioner Stidvent.

7 All in favor, say "Aye."

8 FROM THE COMMISSION: Aye.

9 CHAIRMAN ANDERSON: Opposed?

10 (No response)

11 CHAIRMAN ANDERSON: Seeing none, the
12 motion passes.

13 MR. BABIAK: We will issue the report.

14 CHAIRMAN ANDERSON: Thank you.

15 AGENDA ITEM NO. 8

16 MR. BABIAK: Okay. That brings us to
17 Agenda Item No. 8. If you will give us a moment, I am
18 going to move to the podium, and Dennis Swinney and
19 Richard Webb will come to the table.

20 CHAIRMAN ANDERSON: Okay.

21 MR. BABIAK: Outside of your booklets, I
22 have provided you with a manila folder up on the dais,
23 and that has materials to accompany the presentation.
24 And on the first page you'll see the agenda item, and
25 you'll be able to follow along in the presentation. And

1 this will be a presentation, an overview of conducting a
2 personnel policy and procedural systems review. And at
3 this point, I will turn it over to Dennis Swinney.

4 MR. SWINNEY: Thank you, Jonathan.

5 Good morning, Chair Anderson,
6 Commissioners, guests and staff. I am Dennis Swinney,
7 the Civil Rights Division policy reviewer.

8 In today's training on a state agency
9 personnel policies and procedure, systems reviews, we
10 will cover the legislative background, our field work
11 processes, our analysis and close-out process.

12 Going back, in 1999, the 76th Legislature
13 passed House Bill 1976, effective September 1, 1999,
14 amending Texas Labor Code 21 and establishing four new
15 requirements. One, the bill created new requirements
16 for employment discrimination training programs. Two,
17 the bill required the development and implementation of
18 personnel policies and procedures in compliance with
19 employment discrimination laws. Three, the bill created
20 requirements relating to reporting equal employment
21 opportunity information and minority recruiting plans.
22 And finally, House Bill 1976 provided a review of
23 agencies' personnel, policies, procedure and systems on
24 a six-year cycle.

25 There are approximately 160 agencies

1 subject to review, or we would say 26 reviews each year.
2 Agencies subject to review include institutions of
3 higher learning -- excuse me -- higher education but do
4 not include public junior colleges. During each
5 legislative session, we monitor government
6 reorganization activities to know if any new agencies
7 are created or if any existing agencies are abolished.

8 For example, we adjusted our 2011 review
9 schedule after the State Board of Barber examiners was
10 abolished by the Legislature in 2005, and those
11 functions were moved under the Department of Licensing
12 and Regulation.

13 At this point I would like to turn it over
14 to Mr. Webb who will describe our notification,
15 preparation and field work processes.

16 MR. WEBB: Good morning, Chair Anderson,
17 Commissioners, guests and staff. For the record, my
18 name is Richard Webb, and I'm also a policy reviewer.

19 Based on the schedule of reviews each
20 fiscal year, we begin by sending a notification letter
21 to each agency under review. You will find a sample
22 notification letter in your material. This letter
23 describes our statutory authority to conduct and review
24 and provide a comprehensive list of policy areas to be
25 covered during the review.

1 There are four areas covered in detail.
2 One, hiring and promotion policy; two, employee
3 performance evaluation policy; three, workplace
4 disability, a combination policy; four, disciplinary
5 action policy. In addition to those four areas covered
6 in detail, we also verify attendance at new employee
7 orientation training on equal employment opportunity
8 policy, including sexual harassment, and we also verify
9 attendance at the required two-year refresher training.

10 Finally, from institutions of higher
11 education, we also perform a detailed review of
12 comprehension policy -- I'm sorry -- of compensation
13 policy. Following the initial response from the agency
14 under review, we confirm the on-site date, we obtain
15 contact information, we create a contract for billing.

16 In the initial response, we receive a copy
17 of the personnel policy from the agency under review.
18 After receiving the policy from the agency under review,
19 we check the policy for completeness and we become
20 thoroughly familiar with the policy. We analyze the
21 information from the documents received and prepare
22 questions for the on-site review, if necessary. During
23 the on-site review, we sample actual personnel actions
24 from each detailed area of the review, four areas for
25 state agencies and five areas in cases of institutions

1 of higher education.

2 In the area of hiring and policy -- and
3 promotion policy, we review the current analysis of the
4 workforce performed by the agency under review to
5 determine if any exclusions are under-utilization of
6 African-Americans, Hispanics and females. Dennis will
7 discuss the under-utilization later when he covers our
8 analysis.

9 Also in the area of hiring and promotion
10 policy, we review job descriptions, job postings,
11 employment applications, selection procedures and
12 interview information.

13 In the area of performance evaluation, we
14 review samples of evaluations and any supporting
15 documents used to substantiate ratings.

16 In the area of workplace accommodation, we
17 review samples of requests for accommodations and
18 associated responses from the agency under review to
19 test for compliance.

20 In the area of disciplinary policy, we
21 test samples to determine if the disciplinary actions
22 are based solely on job performance and job-related
23 conduct.

24 For the area of equal employment
25 opportunity training, including sexual harassment

1 prevention training, we verify training records of the
2 agency under review. The statute requires new employees
3 to be trained within 30 days of hire, and all employees
4 are to undergo refresher training every two years.

5 For institutions of higher education in
6 the area of compensation policy, we test samples to
7 determine if the standards of compensation are based on
8 a system of bona fide seniority and job qualification.

9 After the agency under review has had an
10 opportunity to present all of the information that we
11 need, we conduct an exit briefing. During the exit
12 briefing, we do not discuss any potential findings with
13 the agency under review. Instead, we thank them for the
14 information they have provided and tell them the
15 information will be reviewed and analyzed and at that
16 time they will receive a copy of the results upon
17 completion of the review.

18 At this point I will turn it over to
19 Dennis to cover the analysis and close-out stages of the
20 review process.

21 MR. SWINNEY: Thank you, Mr. Webb.

22 After gathering all the necessary
23 documents and data from the on-site visit, all data is
24 taken to the division for analysis. In your material
25 you will find a checklist of the criteria that we use to

1 perform this analysis. Part of our review consists of
2 workforce analysis to determine any exclusion or
3 under-utilization of African-Americans, Hispanics and
4 females. Each state fiscal biennium, each state agency
5 is required to analyze its current workforce and compare
6 the number of African-Americans, Hispanic-Americans and
7 females employed by the state in each job category to
8 the available number of African-Americans, Hispanic-
9 Americans and females in the statewide civilian
10 workforce to determine the percentage of exclusion or
11 under-utilization in each job category.

12 Agencies are required to take into
13 consideration any under-utilization creating their
14 recruitment plans. Once we conclude our analysis, there
15 are several possible outcomes. If we conclude the
16 agency under review is in compliance with all aspects of
17 Texas Labor Code 21, we send a certification letter
18 which includes instructions on reporting the state
19 agency's certification, and you have a sample of that in
20 your material.

21 If we conclude the state agency under
22 review is not in compliance with any aspect of Texas
23 Labor Code, Chapter 21, we send a letter describing our
24 recommended changes to the agency's policy. The statute
25 expressly authorizes the agency under review to accept

1 or reject our recommendations.

2 Not later than 60 days after we complete
3 our review, the agency under review is required to
4 submit to the Commission, to the Governor, the
5 Legislature, and the Legislative Board, Budget Board, a
6 report detailing its response, whether the agency
7 implemented the recommendations of the Commission, if
8 the agency did not implement all the recommendations of
9 the Commission's recommendations, the reason for
10 rejecting those recommendations. And in your material,
11 that is supplied for you.

12 This concludes the policy and procedures
13 system review process. At this time, I will turn it
14 over to Jonathan.

15 MR. BABIAK: Thank you, Dennis. Thank
16 you, Richard.

17 Commissioners, that concludes our prepared
18 presentation, and at this time we're available to you if
19 you have any questions.

20 CHAIRMAN ANDERSON: The checklist that you
21 have says chapter and page and then section. Does that
22 refer to the TLC, the Texas Labor Code, or does that
23 refer to something else on that check list?

24 MR. BABIAK: The citations in the
25 checklist that are identified as TLC 21 point something

1 are citations to sections of the Texas Labor Code.

2 CHAIRMAN ANDERSON: Well, I'm talking
3 specifically about the chapter and page. And right next
4 to it, you say "Yes" or "No." This column here
5 (indicating), what does that refer to?

6 MR. BABIAK: The columns refer to, one,
7 the chapter and page of the policy of the agency under
8 review that relates to that requirement in the Labor
9 Code and then an indication of "Yes" or "No," does that
10 policy comply with the requirement in the Labor Code.

11 CHAIRMAN ANDERSON: All right.

12 COMM. GLOVER: I'm sorry. Can you back
13 that up and -- that's okay. You can hear me anyway.
14 Can you back that up and tell me the first part again of
15 where we can find that information. Under the Texas
16 Labor Code, I got, but on the columns referring to.

17 MR. BABIAK: Yes. On the checklist,
18 there's two columns to the right, and one column has a
19 heading "Chapter/Page."

20 COMM. GLOVER: Yes.

21 MR. BABIAK: That's where the reviewer can
22 document the chapter and page from the personnel policy
23 submitted to us by the agency under review. And then
24 the second column, either "Yes", No," or "Not
25 Applicable," the reviewer indicates whether that

1 particular policy does comply with the requirement in
2 the Texas Labor Code.

3 CHAIRMAN ANDERSON: Is there a minimum
4 size to the agency before they have to have all these
5 policies and procedures? I would guess some of the
6 agencies are pretty small.

7 MR. BABIAK: Texas Labor Code, Chapter 21
8 provides a definition for state agency. The definition
9 does not have any information related to size and, as a
10 result, even very small agencies are subject to review.

11 CHAIRMAN ANDERSON: You mentioned that the
12 higher education includes junior colleges -- or does not
13 include junior colleges. Does it also not include
14 community colleges or are they considered the same?

15 MR. BABIAK: I think community colleges
16 fall within what the statute identifies as public junior
17 colleges.

18 CHAIRMAN ANDERSON: Okay. Why are they
19 not subject to this in higher -- you know, the four-year
20 institutions are?

21 MR. BABIAK: I would have to look at the
22 legislative history to see if there is an answer to that
23 question. Right now I only know that the statute does
24 not cover them, and I don't know the policy underlying
25 that.

1 CHAIRMAN ANDERSON: What happens if the
2 agencies do not comply? I know there is a \$5,000
3 penalty that's taken away from their budget if they
4 don't. But, I mean, is there a history of agencies not
5 complying?

6 MR. BABIAK: In our experience, most
7 agencies comply.

8 CHAIRMAN ANDERSON: Cooperate and comply?

9 MR. BABIAK: As Dennis pointed out in his
10 portion of the presentation, the statute expressly
11 allows agencies to choose not to adopt recommendations
12 that we make. If that is what they choose to do, the
13 statute simply requires that they report to CRD, the
14 Governor, the Legislature and the Legislative Budget
15 Board that they will not adopt the recommendations and
16 their reasons for rejecting the recommendations.

17 CHAIRMAN ANDERSON: But then how is the
18 \$5,000 penalty applied if they're allowed to not --

19 MR. BABIAK: The \$5,000 penalty applies if
20 the agency under review does not provide that response
21 within 60 days.

22 CHAIRMAN ANDERSON: Okay. So an agency,
23 say the size of the TWC, a \$5,000 penalty is not
24 significant. But is there any enforcement at all on
25 this, just political enforcement or political will?

1 MR. BABIAK: Well, No. 1, my belief is
2 that the human resource professionals who establish and
3 implement personnel policies diligently try to comply.
4 Secondly, the statute does not provide for any direct
5 enforcement through the policy review process. It
6 provides only for CRD to make recommendations and then
7 for the agency under review to respond within 60 days to
8 those recommendations.

9 CHAIRMAN ANDERSON: But even if an HR
10 professional could disagree with you-all and say, "Yes,
11 we are complying," and your recommendations are, I'll
12 say, not without merit, "but we believe our process is
13 just as effective as what you're recommending"?

14 MR. BABIAK: And, yes, that certainly
15 could be a response for an agency, to state that they
16 are not going to adopt the recommendations because they
17 believe that their existing policy already is in
18 compliance.

19 CHAIRMAN ANDERSON: Well, do you have any
20 idea what the percentage of certification is on the
21 agencies? You say you do 20 some of them every 26 --
22 every year.

23 MR. BABIAK: We do 26 a year. And I'll
24 have to defer to Dennis, who has been in this role since
25 2005.

1 Dennis, do you have any specific memory of
2 an agency having to respond to a letter making
3 recommended revisions?

4 MR. SWINNEY: Throughout my tenure, no, we
5 have had compliance.

6 CHAIRMAN ANDERSON: Okay. Any other
7 questions from any of the Commissioners?

8 (No response)

9 CHAIRMAN ANDERSON: Mr. Webb, Mr. Swinney,
10 thank you very much. We appreciate your articulate
11 presentation and very informative.

12 MR. SWINNEY: Thank you.

13 MR. WEBB: Thank you.

14 AGENDA ITEM NO. 9

15 CHAIRMAN ANDERSON: Item No. 9,
16 discussion, consideration and possible action regarding
17 the Commission on Human Rights roles, responsibilities
18 concerning agenda development procedures.

19 That's me, and we have nothing on that, do
20 we, Becky?

21 MS. SMITH: No.

22 AGENDA ITEM NO. 10

23 CHAIRMAN ANDERSON: Okay. Item No. 10,
24 discussion, consideration and possible action regarding
25 future meetings. And the future meetings are scheduled

1 for January 18th, which is today, April 18th, July 18th
2 and October 17th, all 2012. Anybody on the Commission
3 like to modify those dates?

4 (No response)

5 CHAIRMAN ANDERSON: Okay. Seeing none, we
6 will continue with that.

7 AGENDA ITEM NO. 9 (CONTINUED)

8 CHAIRMAN ANDERSON: I guess going back to
9 No. 9, our action items probably would fall under that.
10 Jonathan, do you want to discuss any of
11 the action items listed?

12 MR. BABIAK: Yes, Chair Anderson. I want
13 to apologize. I have not yet begun the assignment to
14 contact the Society of Human Resource Management
15 chapters. As I stated earlier, we have been extremely
16 busy since our last meeting. And I will get to work on
17 this as soon as possible.

18 In addition, we have been working with the
19 mediators to examine our processes in ADR to increase
20 the efficiency and the rate of closing cases; and, as a
21 result, we have not taken the time to track commonality
22 on non-financial resolutions. Right now we do not have
23 a way to track that.

24 CHAIRMAN ANDERSON: Okay. On the first
25 item you discussed, there's 36 chapters in the State of

1 Texas, SHRM chapters, and certainly the one in Austin,
2 San Antonio, and there's a couple of others in this
3 area, you might go on the state council website, and it
4 will tell you specifically where some of the chapters
5 are. Those might be the ones you might want to focus on
6 first, obviously, in this general area, and that way you
7 won't have to travel any place to any of the others if,
8 in fact, some of them are interested.

9 Some of the smaller chapters are always
10 looking for somebody to speak. The larger chapters can
11 usually get speakers, because they're all trying to get
12 in front of as many HR people as they can, but the
13 smaller chapters always have problems.

14 The next item on the action items was
15 completed today. We took care of the meetings coming
16 up.

17 And is there any change in the opinion of
18 Commissioner Stidvent and Commissioner Diggs concerning
19 the continuation of the budget meetings?

20 COMM. DIGGS: I think I would like to see
21 how January comes in, and then we can determine that.

22 CHAIRMAN ANDERSON: Okay. So we'll defer
23 this to the April meeting --

24 COMM. DIGGS: That's correct.

25 CHAIRMAN ANDERSON: -- and make a decision

1 at that -- well, or -- send us the results of January
2 and then Commissioner Stidvent and Commissioner Diggs,
3 you can contact them or they can contact you if they
4 want to go ahead. We won't have to wait until April.
5 That may be too late.

6 MR. BABIAK: The results from Daryl and
7 Jim in Budget usually come right around or shortly after
8 the middle of the month. For example, yesterday I got
9 the results for December. And so I suspect it would be
10 shortly after the middle of February that I'll be able
11 to send those results to you.

12 COMM. DIGGS: That's fine.

13 CHAIRMAN ANDERSON: Okay. And at that
14 point, the two commissioners can decide whether they
15 want to move forward with the coming year budget
16 discussion.

17 AGENDA ITEM NO. 11

18 CHAIRMAN ANDERSON: Okay. It's now 10:09,
19 and we are going to move into closed or executive
20 session. Is there anything else we need to discuss in
21 open before we adjourn?

22 Okay. Government Code, Section 551.074,
23 and we will discuss our Government Code, Section
24 551.071(1), contemplated litigation; 551.074, the
25 evaluation of the Director of the Commission on Civil

1 Rights will be discussed; and then Government Code,
2 Section 551.071(2), all matters identified in this
3 agenda where the commissioners seek the advice of their
4 attorney as privileged communications under the Texas
5 Disciplinary Rules of Professional Conduct of the State
6 Bar of Texas and to discuss the Open Meetings Act and
7 the Administrative Procedures Act.

8 And we will adjourn to room -- which
9 room -- right back here?

10 MR. BABIAK: One of the meeting rooms.

11 CHAIRMAN ANDERSON: Okay. One of the
12 meeting rooms here off of the TWC's board meeting room.

13 Is there anything else? There is a
14 meet-and-greet afterwards?

15 Okay. So we'll discuss that, the
16 litigation, and we'll discuss Mr. Babiak's performance
17 review. And the meeting is adjourned at 10:11.

18 (Executive Session: 10:11 a.m. to
19 11:14 a.m.)

20 CHAIRMAN ANDERSON: Okay. We're back in
21 open session. It's 11:14. There was no action taken or
22 proposed in executive session. We will be conducting a
23 performance review for Mr. Babiak in February that will
24 reflect the six-month period till the end of December,
25 December 31, 2011.

1 And you and I will set up a mutual
2 convenient date to discuss that. We would also like for
3 you to propose some goals and objectives, to include
4 more strategic goals and objectives for this next
5 reporting period.

6 Our next meeting will be April 18th at
7 9:00 a.m., and will be right here in this room.

8 AGENDA ITEM NO. 12

9 CHAIRMAN ANDERSON: If there is nothing
10 further for the Civil Rights Division of TWC, this
11 meeting is adjourned without exception at 11:15. Thank
12 you all.

13 (Meeting adjourned: 11:15 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Aloma J. Kennedy, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of January 2012.

Aloma J. Kennedy
Certified Shorthand Reporter
CSR No. 494 - Expires 12/31/12

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