

MINUTES -- 228th Regular Meeting

FAIR EMPLOYMENT PRACTICE COMMISSION
STATE OF CALIFORNIA

3 November 1977, 10:00 a.m.
State Building, Room 2198
San Francisco CA

PRESENT: Chairperson Martin, Commissioners Guimaraes, Munoz, and Ramirez; staff members Lytle, Hastie, Wilson, Baker, Butterfield, Johnston, B. J. Miller, and Blackwell.

In the absence of Deputy Chief Batiza, Executive Officer Hastie conducted the presentations at the 228th Regular Meeting of the Commission which was called to order at 10:00 a.m.

MINUTES OF THE PREVIOUS COMMISSION MEETING: Commissioner Ramirez moved, Commissioner Guimaraes seconded and the motion was carried unanimously to approve as prepared the minutes of the 227th Regular Meeting.

REVIEW OF THE AGENDA: In reviewing the agenda, the following additions and deletions were made:

- (1) Discussion of the possibility of Commissioner Munoz's attending an IAOHRA Board Meeting in the very near future;
- (2) Discussion of special order and public hearings of the Commission by Executive Officer Hastie;
- (3) For informational purposes, the discussion of a letter (report) received by Chairperson Martin from Chief Lytle, relative to the Association of Business Trial Lawyers; and
- (4) Deletion of the Pepsico Report under Old Business.

There were no further additions or deletions made on the agenda at this time.

IAOHRA BOARD MEETING: In connection with the request for Commission discussion by Commissioner Munoz regarding the possibility of his attending the upcoming IAOHRA Workshop, Commissioner Ramirez moved, Commissioner Guimaraes seconded and the motion was carried unanimously that the Commission go on record as being in support of Commissioner Munoz's request to attend the Executive Com-

mittee Meeting of the International Association of Official Human Rights Agencies (IAOHRA) in Washington DC, on 12 November 1977, contingent upon the availability of funds. And, as a matter of record as the Commission will be using public funds, for all meetings, conferences, workshops, etc., attended out of the state, that a report of activities be submitted by the person in attendance in order that it be used to relate to the Commission's functions and how it ties into their responsibilities.

COMMISSIONER'S REPORT

Nominations to the Spanish Speaking
Advisory Committee (Commissioner Ramirez)

The following individuals were nominated for membership to the Spanish Advisory Committee by assigned Commissioner Ramirez:

Santiago J. Caudillo, Past President of IMAGE de California,
Department of Labor Representative for Region IX,
San Francisco

Dr. Fernando Hernandez, Assistant Dean in the School of
Education, Cal State Los Angeles

Ellie Enricus Peck, active community person in the
Sacramento area

Ben Rodrigues, involved in several housing programs with
the GI Forum in the Los Angeles area

Blanca Alvarado, active community person in the San Jose
area

Commissioner Ramirez informed the Commission that as she has an opportunity to meet with additional people, she will be submitting recommendations for membership.

The assigned Commissioner Ramirez moved, Commissioner Munoz seconded and the motion was carried unanimously to accept these individuals for membership to the Spanish Speaking Advisory Committee.

IMAGE Training Proposal
(Commissioner Ramirez)

As a follow-up to last month's Commission meeting, Commissioner Ramirez reported that there had been a proposal circulated in rela-

tionship to IMAGE de Sacramento. The Sacramento IMAGE Chapter wanted to co-sponsor with FEPC a conference in the Sacramento area. Commissioner Ramirez, at this time, reported that she met during the month of October with the President and members of the IMAGE de Sacramento informing the group of FEPC's inability at this time to co-sponsor such a conference due to the present workload and upcoming changes as a result of the passage of AB 738. Commissioner Ramirez offered an alternative that in the event that their program does not materialize, that the Commission schedule some of its meetings in the Sacramento area. The group was agreeable to this suggestion.

TACT Discussion

At this time, discussion took place relative to TACT membership, and related matters.

Annually, TACT holds an election for Chair of the Committee, and the next nomination is due to come December 1977. An issue was raised as to the Committee's lack of success in retaining significant minority representation. It was noted by Executive Officer Hastie that there have been a number of times in the past when they have had higher minority levels of participation on TACT, but such participation has not continued.

In light of this discussion, Commissioner Ramirez moved, Commissioner Munoz seconded and the motion was carried unanimously that staff be in contact with TACT to solicit nominees for membership on the Committee, and that the activities of TACT be evaluated in order to recommend new directions. Executive Officer Hastie was asked to communicate this request TACT.

EXECUTIVE OFFICER'S REPORT

Commission Case Actions

The list of case closings through 3 November 1977 was submitted to the Commission prior to the Commission meeting. Executive Officer Hastie offered the list of case closings as amended by late administrative review requests for ratification.

Commissioner Munoz moved, Commissioner Guimaraes seconded and the motion was carried unanimously to adopt the list of case closings as amended through 3 November 1977.

Administrative Reviews

Administrative Review Officer Hastie presented to the Commission his findings and conclusions on the administrative reviews he conducted and made recommendations as follows:

ESPINOSA/Singer Business Machines
FEP74-75-A1-942

Commissioner Dellums, the assigned Commissioner, was not present and thus did not participate in the discussion and vote on this and the following case.

Commissioner Munoz moved, Commissioner Guimaraes seconded and the motion was carried unanimously to uphold the administrative recommendation by ratifying the decision of the assigned Commissioner to reopen this case, investigating the matter on a priority basis.

SAYED/Dobbs House, Incorporated
FEP74-75-A1-1192

Commissioner Ramirez moved, Commissioner Guimaraes seconded and the motion was carried to uphold the administrative review recommendation by ratifying the decision of the assigned Commissioner in the closing of this case on the basis of "successful conciliation, no determination as to inequities". Commissioner Munoz abstained from voting on this motion.

CADENA/Interharvest
FEP76-77-A3-1086E

Commissioner Munoz, the assigned Commissioner, did not participate in the discussion and vote on this case.

Commissioner Ramirez moved, Commissioner Guimaraes seconded and the motion was carried unanimously to uphold the assigned Commissioner's recommendation and decision to reopen this case for investigation returning it to its place in the backlog.

HARVEY/Southern Pacific Transportation Company
FEP75-76-B2-322e

Former Commissioner Stuchen was the assigned Commissioner on this case.

Commissioner Guimaraes moved, Commissioner Ramirez seconded and the motion was carried unanimously to uphold the administrative review

recommendation by ratifying the decision of the assigned Commissioner in the closing of this case, changing the basis of closure from "insufficient evidence to sustain complaint" to "no jurisdiction" (complainant waived legal rights).

FORWOOD/Continental Airlines
FEP75-76-B2-940a

Commissioner Roos, the assigned Commissioner, was not present and thus did not participate in the discussion and vote on this case.

Commissioner Munoz moved, Commissioner Guimaraes seconded and the motion was carried unanimously to uphold the administrative review recommendation by ratifying the decision of the assigned Commissioner in the closing of this case on the basis of "no adjustment effected, no determination as to inequities".

New Directions

In line with the discussion which took place at this time regarding the changes in Commission functions as a result of the passage of AB 738, to become effective 1 January 1978, Commissioner Munoz moved, Commissioner Guimaraes seconded and the motion was carried unanimously to set an additional 1977 Commission meeting to discuss the change in Commission legal authorities, with a follow-up training/orientation session, to take place tentatively on Thursday, 29 December 1977, 9:30 a.m., depending upon the calendar of those Commissioners not present today.

It was suggested by Executive Officer Hastie, for the interest of the Commission, that they consider at some point in the future setting up some committees of the Commission to deal with areas of its ongoing interests or areas of its future activities. The following were the suggested areas of major concern:

- (1) Legislative Matters
- (2) Investigatory Hearings
- (3) Annual Reports and Commission Publications
- (4) Budgetary and Personnel Matters
- (5) Regulations and Guidelines
- (6) Advisory Committees and Conciliation Councils

The Commission approved this suggestion in principle, asking for more information on what staff envisions the functions of the Commission liaison to entail. Executive Officer Hastie asked that the Commission choose at this time a Commission liaison to be particularly designated to work in the area of regulations and guidelines, as there is a great deal of activity presently ongoing. Commissioner Guimaraes was asked to act as Commission liaison in the area of regulations and guidelines, and upon her acceptance was so designated.

Legislative Update

Executive Officer Hastie offered to the Commission a review of 1978 Legislation, attached to the minutes, hereto. Mr. Hastie also offered new ideas for future legislation as follows and asked for Commission reaction and suggestions at the next meeting.

(1) That the Commissioner's terms be extended from four year terms to six year terms;

(2) That the Chair of the Commission be a full-time employee with a salary commensurate with other Commissioners in state government;

(3) That the Commission specify remedies available to them including recommending that respondent/owners licensed by the state and found to be engaging in an unlawful practice should be subject to formal recommendation by the Commission to that licensing agency concerning the status of that particular license;

(4) That the Commission consider recommending that the Division be provided with the authority to represent itself in state courts for the purpose of seeking preliminary relief, etc.;

(5) That the Commission specify that the Division be required to give a report of activities to the Commission on a semi-annual or other basis; and

(6) That the Commission copy a provision in the Labor Code which provides that willful discrimination in a recruitment or apprenticeship program is a misdemeanor in the State of California.

RECESS: At Twelve Noon the Commission recessed for lunch.

RECONVENE: At 1:30 p.m. the Commission reconvened. Present were

Chairperson Martin, Commissioners Guimaraes, Munoz, and Ramirez; staff members Lytle, Hastie, Wilson, Butterfield, Johnston, B. J. Miller, and Blackwell.

EXECUTIVE OFFICER'S REPORT (Cont'd.)

Commission Staffing

In connection with much discussion which has taken place today and at past Commission meetings concerning the change in Commission functions as a result of the passage of AB 738, Executive Officer Hastie circulated to the Commission, as an advisory matter to generate Commission comments and suggestions, a draft projecting future Commission staffing over a period of two and one-half years, commencing 1 January 1978. It was noted that this would be appropriate for further development as a part of the Commission training/orientation session in perceiving the needs of Commission staff.

Also, Executive Officer Hastie expressed his hope to have identified, prior to the next Commission meeting, and with the help of Division staff, some specific staff people to be official liaison for Commissioners in those cities where there are FEPC offices. A schedule will be set up for review and approval.

AB 803 (Brown)

AB 803 prohibits discrimination by those who receive state fiscal assistance and prohibits discrimination in providing benefits and services pursuant to state fiscal assistance.

Executive Officer Hastie reported that he had one brief meeting last month from which there were no results to report. He went on to report that he had sent a letter to Mr. Horace McFall, Civil Rights Officer for the Office of the Secretary of Health and Welfare Agency. Mr. Hastie advised that this was the present status of the issue previously raised and expressed his desire to arrange a meeting between the Secretary of Health and Welfare and those members of the Commission who are available, to sit down and share ideas, after which staff will proceed to do as directed.

Commission Public Hearings

The Commission was apprised of the upcoming Commission Public Hearings for the month of November and the need to have a quorum at as many as possible.

- (1) RIVARD/American National Insurance Company
FEP75-76-D2-034 (Commissioner Roos)
7 November 1977, 9:00 a.m., Los Angeles
Attorney Nancy Shaw
- (2) SUMNER/Interstate Brands Corporation
FEP74-75-F1-083ph (Commissioner Ramirez/Martin)
17 November 1977, 10:00 a.m., San Bernardino
Attorney Marian Johnston

This concludes the Executive Officer's Report to the Commission.

CHIEF'S REPORT

Rules and Regulations

In connection with rules and regulations, Chief Lytle made a brief report to the Commission.

Drafts of the rules and regulations were distributed to the Commission at this time. Ms. Lytle explained that some of the rules and regulations as submitted were anticipated by staff to not require significant further modification; others are anticipated to be subject to substantial modification, in part, to reflect the new legislation. In the package those sections were identified as to which the Commission may wish to begin the public hearing process for formal adoption; the others - for familiarization. A memorandum will be prepared by Chief Lytle identifying the sections and the degree to which they will likely be subject to modification.

Night Commission Meetings

It was suggested that the Commission consider that special Commission meetings, that is those in nature of the meetings which resulted in the "Community Speaks" publication, be held at night, such meetings are predicated on a response or some communication with the public and in order to assure a greater representation of the public, this purpose can be better accomplished if conducted in the evening.

Commissioner Munoz moved, Commissioner Guimaraes seconded and the motion was carried unanimously to authorize night Commission meetings in instances of special order meetings where appropriate to assure greater representation from the public.

Issue of Hair Length and Grooming

Chief Lytle reported that pursuant to an inquiry from Assemblyman Stan Statham, she promised that Commission policy with regard to allegations of discrimination from males with "long hair" would be re-examined. Legal Counsel Johnston, at the instruction of Chief Lytle, prepared a comprehensive memorandum with regard to the issue, and reported as follows:

"Sex" was added to the Fair Employment Practice Act as a basis of discrimination in November 1970 and, at the Commission meeting of 6 May 1971, the Commission approved a motion that "long hair" complaints not be accepted. The policy manual given to consultants contains a statement issued pursuant to the Commission meeting of May 1971 which says:

"The Commission will accept sex discrimination complaints alleging discrimination because of not wearing brassieres or other undergarments; men alleging discrimination because of hair length and complaints based upon homosexuality."

Although "undergarments" and "hair length" cases are not accepted, a "no pants" rule for women has been held to be sex discrimination by the Commission. After a public hearing in the matter of the Accusation of Northern California Grocers Association [Nenneman, FEP73-74-E9-092s], the Commission issued a decision saying the discharging of a woman for wearing a pantsuit was sex discrimination. The decision was appealed, but then settled.

Cases decided under federal law generally hold that rules as to the hair length of male employees are not within the protection of Title VII or the Constitution. The rationale in most Title VII cases seems to be that grooming standards as to hair length is not sex discrimination because long hair is not an immutable characteristic. Other cases seem to say that although there may be discrimination, it is justified by business reasons. A few Title VII cases and several EEOC decisions hold that long hair rules for men is sex discrimina-

tion, but these cases are definitely the minority position. Constitutional challenges to "long hair" rules have also been largely unsuccessful. In addition to "long hair" rules, other grooming standards have also been held not to violate federal law. These include necktie requirements and short skirts. The only grooming standards generally found to violate federal law are those which violate the doctrine of particular religions, and then the claim is religious discrimination not sex discrimination.

Although federal case law seems to be to the contrary, it was recommended that the Commission reverse its policy and accept "long hair" cases. All of the defenses raised by employers appear defective. If safety is the reason, then men and women should be equally restricted to short hair. If customer preference is the reason, this defense was thrown out long ago in the male airline flight attendant cases. The true reason appears to be sex regulations.

AFTER DISCUSSION, Commissioner Munoz moved, Commissioner Ramirez seconded and the motion was carried unanimously that in light of the foregoing analysis, the Commission would accept sex discrimination cases on the basis of grooming standards where the standards are related to sex stereotyping.

INFORMATIONAL ITEMS

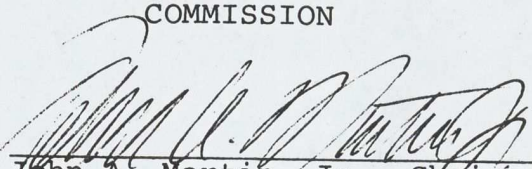
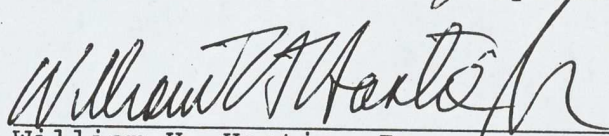
Chairperson Martin brought to the attention of the Commission a letter from the Association of Business Trial Lawyers having to do with the possible availability of lawyers to serve on Commission advisory Committees. It gives the Commission an option to consider calling upon this organization to pull together an advisory committee of lawyers or an opportunity to look at already existing committees in the area of human relations that the Commission can call upon for their various needs. Executive Officer Hastie was asked to share this report with Commissioners and staff, and at some point, perhaps at the next Commission meeting, talk about how the Commission may proceed.

Further, Executive Officer Hastie advised the Commission that Kaiser Steel Corporation has filed an appeal in the Superior Court in the Matter of the Accusation of Kaiser Steel Corporation [Davis].

ADJOURNMENT: At 2:15 p.m. the Commission adjourned its 228th Regular Meeting until Thursday, 1 December 1977, 10:00 a.m., at 322 West First Street, Room 2126(F), Los Angeles, California.

Respectfully submitted,

FAIR EMPLOYMENT PRACTICE
COMMISSION


John A. Martin, Jr., Chairperson
William H. Hastie, Jr.
Executive Officer, Acting Secretary

/slb
Attachment

ATTACHMENT A

STATE OF CALIFORNIA—AGRICULTURE AND SERVICES AGENCY

EDMUND G. BROWN JR., Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

FAIR EMPLOYMENT PRACTICE COMMISSION

455 GOLDEN GATE AVENUE, SAN FRANCISCO

Address reply to: FEPC, P.O. Box 603, San Francisco, CA 94101

Administrative Office 557-2000



TO: All Commissioners

FROM: *William H. Hastie, Jr.*
William H. Hastie, Jr.
Executive Officer

RE: Legislative Update:
1978 Legislation

DATE: October 31, 1977

There are some 15 Assembly bills and 1 Senate measure presently in the Legislative hopper for calendar 1978 which, if passed, would directly affect the operations of the Commission and the Division. Some of the bills make changes already incorporated by the 1977 statutes and in summarizing them at this point, I will only mention the changes which would be made in addition to those presently incorporated by the 1977 statutes.

AB 782 (Chappie). Adds physically handicapped to the Fair Housing Law, making this group protected from discrimination in housing. The bill has passed the Assembly and is awaiting hearing in the Senate Local Government and Housing Committee.

AB 1010 (Mori). This is a legislative declaration that the state FEPC has the authority and primary jurisdiction over discrimination in the state civil service as to employment. The bill is in the initial committee, the Assembly Labor Employment and Consumer Affairs Committee (LE & CA).

AB 1032 (Berman). Specific protection would be mandated for students to be free from discrimination in housing under the Fair Housing Law. This bill has passed the Assembly and is in the Senate Local Government and Housing Committee.

AB 1075 (Gage). This bill would specify that there is a right to attorneys' fees for a complainant when pursuing a private right of action under the FEPA. Such a right exists with regard to the private right of action under the FHL. The bill has passed the Assembly and is now in the Senate Industrial Relations Committee.

AB 1130 (Agnos). As amended, this measure prohibits discrimination in employment on the basis of the applicant or employee's sexual orientation. The bill is in its initial committee, the LE & CA of the Assembly.

AB 1302 (Agnos). This measure would specify that as part of the meaning of sex discrimination, the forcing or the conditioning of employment or continued employment on the basis of the granting sexual favors would be prohibited, employment practices which were based on the asexuality or sexual preference of an employee or applicant would be prohibited, and discrimination on the basis of

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physiological characteristics of male or female (for example, pregnancy) would be specifically prohibited. The bill is in the Assembly Ways and Means Committee.

AB 1495 (Dixon). This measure adds a specific prohibition to the FEPA that the licensing authority of the Department of Consumer Affairs may not discriminate in the licensing process on the FEPA bases. It has passed the Assembly and is in the Senate Business and Professions Committee.

AB 1648 (Mori). This measure would amend the FEPA to greatly strengthen the existing authority in the area of contract compliance, require most suppliers and contractors of goods and services in addition to public works contractors to comply with such provisions, specifically authorize the granting of damages to an aggrieved at hearing in addition to the other remedies already specified, notes that the remedies at hearings are appropriate relief for conciliation, and deletes the existing educational definition of affirmative action in the FEPA. The bill is in its initial Assembly Committee, the LE & CA.

AB 1915 (Dixon, et al.). Adds a provision for attorneys' fees under the FEPA private right of action clause. The bill is in its initial Assembly Committee, LE & CA.

AB 1916 (Dixon, et al.). Authorizes the Commission to appoint its own hearing officers and to establish hearing procedures analogous to but independent from the Administrative Procedure Act, requires employers to maintain certain employment records and specifically authorizes the awarding of up to \$1,000 damages at hearing under the FEPA in addition to backpay and other relief. This bill is in its initial Assembly Committee, LE & CA.

AB 1917 (Dixon, et al.). Changes the name of the Commission and gives it status independent of any agency or department in state government, elevates age discrimination to parity with all of the other forbidden bases under the FEPA. Specifies delegation authority of the Commission and its chief executive, extensively broadens and strengthens the remedies in the contract compliance area. In its initial Assembly Committee, LE & CA.

AB 1918 (Dixon, et al.). Strenghtens the sex discrimination authority of the FEPA to include differential treatment on the basis of pregnancy by all employer, clarifies the appropriate circumstances under which a Commissioner would be disqualified at hearing, clarifies the pre-emption of local law by the FEPA, and removes the special exemption for sex discrimination in retirement, pension and employee benefit and insurance plan. In its initial committee in the Assembly, LE & CA.

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AB 1919 (Dixon, et al.). Authorizes the Commission to appoint its own hearing officers and an Executive Secretary who is director of its staff, specifies the general study and policy authority of the Commission, gives the Commission the authority to assist the disabled in litigation concerning housing discrimination, creates a statutory right in complainants to request of the Commission an administrative review of the dismissal of any complaint, and specifies a state pre-emption of local housing discrimination law. This is in its initial committee of the Assembly, the Local Housing and Development Committee.

AB 1920 (Dixon, et al.). This measure essentially incorporates all the provisions of AB 1915 through AB 1919. In addition, it removes the Commission jurisdiction over the Unruh Act and specific Commission regulatory responsibilities in the area of marital status, it raises the per diem allowance for Commissioners to \$100 a day, adds certain responsibilities in the Commission re the Dymally-Alatorre Bilingual Services Act, it specifies an employer's right to set up certain bona fide job requirements in pension programs, it adds a ban on discrimination by licensing boards to the FEPA, it specifies that the Title VII principles on testing and selection as incorporated in Griggs v. Duke Power Company (U. S. Supreme Court 1971) are part of the FEPA, it states that bona fide seniority and merit systems are exempt as discriminatory under the FEPA, it requires all conciliation agreements to be signed, and it raises the misdemeanor fine for obstructing the work of the Commission to \$1,000. This bill is in its initial committee of the Assembly, LE & CA.

AB 1960 (Berman). This extends the coverage of the FEPA to specifically include most pregnancy related discrimination as unlawful sex discrimination. It is an appropriation bill and is in its initial committee of the Assembly, LE & CA.

SB 962 (Marks and Presley). This bill would specify that age discrimination should be treated like all other types of discrimination under the FEPA for all similar related purposes. It is in its initial committee, the Senate Local Government Committee.