

INDIANA CIVIL RIGHTS COMMISSION

PUBLIC MEETING

SEPTEMBER 20, 2019

1:10 p.m. - 3:40 p.m.

ICRC CONFERENCE ROOM

100 NORTH SENATE AVENUE, ROOM N300

INDIANA GOVERNMENT CENTER NORTH

INDIANAPOLIS, INDIANA 46204

APPEARANCES

COMMISSIONERS:

Steven Ramos - Chairperson

Adrienne Slash - Vice-Chairperson

Alpha Blackburn - Commissioner

Holli Harrington - Commissioner

James Jackson - Commissioner

INDIANA CIVIL RIGHTS COMMISSION:

Gregory Wilson - Executive Director

Caroline Stephens Ryker - Administrative Law Judge

Anehita Eromosele - Docket Clerk

1 CHAIR RAMOS: I call to order the meeting of  
2 the Indiana Civil Rights Commission. It is Friday,  
3 September 20, and I have 1:10 on my clock. We do  
4 have a quorum. Thank you, Commissioners, for being  
5 here today.

6 We would like to have Announcement of our  
7 Agenda, Judge.

8 JUDGE RYKER: Okay. So the first thing that's  
9 on the agenda is approval of the previous minutes.  
10 The next is the director's report. We have some  
11 old business to report on, some appeals. And then  
12 in terms of new business, we need to appoint  
13 Commissioners to the new appeals.

14 There are a few ALJ decisions and orders  
15 before the Commission for review. There is one  
16 case for oral argument. The Commission will review  
17 the meeting dates for 2019 and allow a time for  
18 announcement and public comments.

19 CHAIR RAMOS: Are there any additions or  
20 corrections to our agenda?

21 Hearing none, I would like to have a motion to  
22 approve the previous minutes.

23 COMMISSIONER BLACKBURN: So moved.

24 COMMISSIONER SLASH: Second.

25 CHAIR RAMOS: Seconded by Commissioner Slash.

1 All those in favor, signify by saying aye.

2 (Chorus of ayes.)

3 CHAIR RAMOS: And we actually can do this and  
4 not having to do individual. For those of you  
5 here, we've always had somebody on the phone, so  
6 this will expedite our meeting today. So thank you  
7 all for being here.

8 The next item that's on the agenda is the  
9 director's report.

10 DIRECTOR WILSON: Good afternoon,  
11 Commissioners. Happy Friday.

12 It's been a good month for us. We just  
13 finished meeting our obligations for our EEOC  
14 contract; so that means that for this year we  
15 exceeded our HUD contract, and we met our EEOC  
16 obligations. And that's fantastic for us because,  
17 again, that's a big part of our revenue for how we  
18 do business here at Indiana Civil Rights  
19 Commission.

20 So there is nothing major going on right now.  
21 Again, you have the report, so you can kind of get  
22 a feel. I won't go through it all because I know  
23 we have a long meeting with oral arguments and  
24 other things here today. But, anyway, you can just  
25 kind of take a look at it.

1           We just, I think the other big thing is we  
2           just hired, well, actually, we're going through the  
3           review process, but we actually have made an offer  
4           to a new External Affairs Director. So that brings  
5           a lot of experience to the table.

6           So as soon as that's confirmed and get their  
7           background checks, then we'll see how that goes  
8           from there.

9           Only big thing for us is end of the year  
10          Circle City Classic, the parade, and Sport Expo and  
11          the Torch Bearer Award. I think you have won the  
12          Torch Bearer Award before.

13          COMMISSIONER BLACKBURN: Yes.

14          DIRECTOR WILSON: So that's going on for us  
15          next week, and pretty much we're doing wrap-up. We  
16          are just looking at the year. We have our  
17          end-of-the-year retreat and plan for the 2020.

18          CHAIR RAMOS: Okay.

19          COMMISSIONER SLASH: That's a lot.

20          DIRECTOR WILSON: Yeah. Well, the big thing  
21          for us is meeting our obligations with our federal  
22          partners, and for the second year in a row  
23          exceeding the HUD. That's a big deal. That means  
24          that we've, our staff has done a great job. I  
25          think earlier this year we rewarded our staff for

1 the exceptional work; so we're very happy with  
2 what's going on here at Indiana Civil Rights.

3 CHAIR RAMOS: Congratulations. Good job. I  
4 notice that we do have a financial report, so thank  
5 you for that, and I don't know if everybody got a  
6 chance to look at that.

7 DIRECTOR WILSON: That's basically revenue  
8 that we get from the State and from the HUD  
9 contracts.

10 CHAIR RAMOS: And I notice that you have  
11 anticipations or projections from legislative  
12 appropriations, and then, as you mentioned, the  
13 revenue flows from HUD and EEOC, which you'll find  
14 out shortly.

15 DIRECTOR WILSON: Yes, once they release it.

16 CHAIR RAMOS: As A couple of suggestions in  
17 this, if we can have a breakdown on revenues that  
18 you have shown there, but also one that just kind  
19 of puts it into the different categories as far as  
20 how you spend the money; so part of it goes to the  
21 people, part of it goes to IT. Mostly it's stuff  
22 you've done in those reports anyway.

23 DIRECTOR WILSON: You know, you don't actually  
24 have oversight over budget.

25 CHAIR RAMOS: We have oversight over the

1 Commission.

2 DIRECTOR WILSON: The Commission is separate  
3 though. Actually, we can have a conversation after  
4 this.

5 CHAIR RAMOS: We can do that. It's helpful  
6 from our role in how all the, where it all goes,  
7 so. But we can talk on it.

8 COMMISSIONER BLACKBURN: But this is a good  
9 start.

10 CHAIR RAMOS: Yes, it is.

11 Any questions for Executive Director?

12 Okay. We will move on to old business. We  
13 have four cases that were appointed for appeal and  
14 review. The first case is the case of Victoria  
15 Johnson versus Anderson Housing Authority.

16 And in our last meeting Ms. Johnson provided  
17 some additional information. We tried to convert  
18 that into a readable format or an audio format, as  
19 it turns out. There were some struggles with that,  
20 so we do have it now in a format that I can read,  
21 so I'm just going to extend that decision until the  
22 next meeting.

23 The next item on the list is Bessie Russell  
24 versus Quicken Loans. Vice-Chair Slash.

25 COMMISSIONER SLASH: Uphold. I move that we

1 uphold that, the director's finding.

2 CHAIR RAMOS: Any motions?

3 COMMISSIONER HARRINGTON: Second.

4 CHAIR RAMOS: So you make the suggestion. I  
5 need a motion to approve and then a second.

6 COMMISSIONER HARRINGTON: So I move that we  
7 accept the recommendation.

8 CHAIR RAMOS: I need a second.

9 COMMISSIONER JACKSON: Second.

10 CHAIR RAMOS: All those in favor, signify by  
11 saying aye.

12 (Chorus of ayes.)

13 CHAIR RAMOS: The motion carries.

14 The next item is Brian Rowlette versus Wilson  
15 School Apartments. Commissioner Harrington.

16 COMMISSIONER HARRINGTON: I also recommend  
17 that we uphold the no probable cause finding.

18 CHAIR RAMOS: Motion to approve?

19 COMMISSIONER SLASH: So move.

20 COMMISSIONER JACKSON: Second.

21 CHAIR RAMOS: All those in favor, signify by  
22 saying aye.

23 (Chorus of ayes.)

24 CHAIR RAMOS: The motion carries.

25 The next case is Michael Coello versus Crown

1 Point Police. Commissioner Blackburn.

2 COMMISSIONER BLACKBURN: In the case of  
3 Michael Coello versus Crown Point Police, I move we  
4 accept the Deputy Director's finding of no probable  
5 cause.

6 CHAIR RAMOS: I need a motion to approve.

7 COMMISSIONER SLASH: So move.

8 CHAIR RAMOS: Second?

9 COMMISSIONER HARRINGTON: Second.

10 CHAIR RAMOS: All those in favor, signify by  
11 saying aye.

12 (Chorus of ayes.)

13 CHAIR RAMOS: Motion carries.

14 Item VI on the agenda is new business, so  
15 appointments to complainants' appeals as follows:

16 For Carleana Barnes versus McDonald's Store, I  
17 will take that case.

18 The case of Develan Bland versus OrthoIndy  
19 Urgent Care, Commissioner Slash.

20 For Hassanin Aly versus Steak 'n Shake,  
21 Commissioner Jackson.

22 For Jason Wineke versus Hamilton Center,  
23 Commissioner Harrington.

24 For Lisa Schneider versus Concert Golf  
25 Partners, Commissioner Blackburn.

1           And the last case is James Clark versus the  
2           BMV, and I will take that case as well.

3           Are there any questions or concerns on any of  
4           those, Commissioners?

5           Hearing none, we will move to the next item.  
6           This is the review of the ALJ decisions and orders.  
7           Judge Ryker.

8           JUDGE RYKER: There are four orders before the  
9           Commission for review. You received the record of  
10          all of these from the docket clerk already in  
11          advance of this meeting.

12          The first is ICRC versus Drummons Management.  
13          And this was a dismissal after the Notice of  
14          Election was filed.

15          CHAIR RAMOS: Would you like to explain the  
16          Notice of Election process?

17          JUDGE RYKER: A Notice of Election is where  
18          the parties have the opportunity to move a case to  
19          State court. This was a Housing case. Only one  
20          party had to file a motion in order for it to carry  
21          the case in the State court. And, again, that is  
22          included in the different documents that you have  
23          before you today.

24          CHAIR RAMOS: Are there any questions? If  
25          not, we need a motion to approve this dismissal.

1 COMMISSIONER SLASH: So move.

2 COMMISSIONER BLACKBURN: Second.

3 CHAIR RAMOS: Those in favor, signify by  
4 saying aye.

5 (Chorus of ayes.)

6 CHAIR RAMOS: The motion carries.

7 JUDGE RYKER: The second decision by the ALJ  
8 that is before the Commission is Lymon versus UAW  
9 Local Union. And this was a case in which Chair  
10 Ramos has set a briefing deadline as well as an  
11 oral argument deadline, and I want to make the  
12 Commission aware of those dates.

13 The briefing deadline is October 9, and the  
14 oral arguments are currently scheduled for  
15 October 18.

16 CHAIR RAMOS: Thank you.

17 JUDGE RYKER: The third case before the  
18 Commission for review is Bowman versus Tiki Bob's  
19 Night Club. This was a case that has been  
20 dismissed after the parties requested the dismissal  
21 jointly.

22 CHAIR RAMOS: Are there any questions on this  
23 case? If not, I need a motion to approve the  
24 dismissal.

25 COMMISSIONER SLASH: So moved.

1 COMMISSIONER BLACKBURN: Second.

2 CHAIR RAMOS: All those in favor, signify by  
3 saying aye.

4 (Chorus of ayes.)

5 CHAIR RAMOS: The motion carries.

6 JUDGE RYKER: The final case before the  
7 Commission is HE versus Belterra Casino. In that  
8 case there are oral arguments scheduled here today.  
9 Again, the docket clerk has emailed the record to  
10 you in advance of today's meeting, and there are  
11 objections from both parties, and the parties will  
12 present oral arguments.

13 CHAIR RAMOS: Thank you, Judge Ryker. We will  
14 now move to the oral arguments.

15 I'll provide some background, at least from  
16 the perspective of what we need to do. We do have  
17 a translator. Is that person here?

18 JUDGE RYKER: So that's something that I will  
19 get set up here, if we could take a brief pause for  
20 me to get that interpreter on the phone.

21 I will let the Commission know because I  
22 issued this decision, I will step out while the  
23 parties are arguing to keep everything objective  
24 and neutral. Our docket clerk will keep time today  
25 for whatever amounts are set by the Commission. I

1 request just a brief recess in order to get the  
2 interpreter on the line.

3 CHAIR RAMOS: Okay. We are off the record.

4 (A recess was taken.)

5 (The following record is translated into  
6 Cantonese by the interpreter appearing via  
7 telephone.)

8 CHAIR RAMOS: We'll call back to order the  
9 Commissioner meeting. We have in front of us now  
10 the oral arguments in the case for HE versus  
11 Belterra Casino.

12 THE INTERPRETER: I'm sorry to interject. I  
13 can hardly hear.

14 CHAIR RAMOS: That doesn't stretch any  
15 further? Do you have a volume on your phone that  
16 you can turn up?

17 THE INTERPRETER: I already turned it to the  
18 maximum volume.

19 CHAIR RAMOS: I'll try and speak extremely  
20 loud, if I can. Can you hear me okay?

21 THE INTERPRETER: So far, yes.

22 CHAIR RAMOS: All right. So we've called the  
23 meeting to order, and the procedure that we will  
24 follow is to, we'll give each of the counselors 30  
25 minutes of time to present their arguments, and you

1 need to translate as we kind of go along.

2 So each side will have 30 minutes for their  
3 case, and then they'll have five minutes for  
4 rebuttal.

5 THE INTERPRETER: Five minutes for rebuttal,  
6 did you say that?

7 CHAIR RAMOS: Yes. Well, probably ten minutes  
8 because of the translation.

9 Before I begin, I actually need to swear you  
10 in as a translator. So I need you to, if you can,  
11 I will officially swear you in. I need you to  
12 identify your name, first and last name, and your  
13 identification.

14 THE INTERPRETER: Okay. Chair, we don't give  
15 our last name, but I can tell you my first name and  
16 the first initial of my last name and my ID number.  
17 My first name is Carmen, "C" as in Charlie, "A" as  
18 in alpha, "R" as in Romeo, "M" as in Mike, "E" as  
19 in echo, "N" as in November. And the first initial  
20 of my last name is "H" as in hotel. My interpreter  
21 ID number is CHCH, Charlie Hotel Charlie Hotel.

22 CHAIR RAMOS: Okay. If you would, please,  
23 raise your right hand. Do you affirm under  
24 penalties of perjury that you will justly, truly,  
25 and impartially interpret to the witness the oath

1 about which is to be administered to him or her,  
2 the questions that may be asked him or her, and the  
3 answers that he or she shall give to the questions  
4 relative to the cause now under consideration  
5 before this agency?

6 THE INTERPRETER: Yes, I do.

7 CHAIR RAMOS: Thank you. All right. With  
8 that, we shall begin.

9 We will begin with the complainant for 15  
10 minutes, or for 30 minutes, and you can do the  
11 translation.

12 THE INTERPRETER: Question. This is  
13 consecutive interpretation; right? You say one  
14 sentence, I interpret one sentence; right?

15 CHAIR RAMOS: Yes. Well, it might be a couple  
16 of sentences.

17 THE INTERPRETER: So please give me the time.  
18 Okay? So go ahead, please.

19 CHAIR RAMOS: We will also have a time person  
20 that's monitoring, just so you know, when 25  
21 minutes are up.

22 COMMISSIONER HARRINGTON: Question. How will  
23 she know when to speak?

24 THE INTERPRETER: I'm sorry. I cannot make  
25 sense of what you said.

1 CHAIR RAMOS: I think the question is how will  
2 you know when to translate. And I would ask that  
3 you just have a pause, and then that will provide  
4 the opportunity for translation.

5 Are you comfortable with that, counsel?

6 MR. PETTYGROVE: Yes. Past experience  
7 dictates I may forget. But with your reminder,  
8 we'll get through it.

9 MR. HEALY: We're talking one sentence at a  
10 time?

11 CHAIR RAMOS: I would do a couple of  
12 sentences. We'll see how it goes.

13 MR. HEALY: A few.

14 CHAIR RAMOS: I would also obviously get to  
15 the key points of your discussions.

16 All right. We will begin, Counsel Healy.

17 MR. HEALY: Thank you, Mr. Chairman, and  
18 fellow Commissioners.

19 I want to first thank Judge Ryker for writing  
20 a very precise, thorough, legally sufficient  
21 decision in this case. She placed a great deal of  
22 emphasis upon the issues that we are to discuss  
23 today. I think that she should be commended for  
24 what she has done, and I have no issue with her  
25 finding of disability discrimination that was

1 inured against Belterra.

2 I only had a few objections that I made with  
3 respect to the damages portion of the decision, but  
4 I will get to that during my presentation.

5 For now I wish to address the elements of the  
6 disability discrimination case because that is what  
7 respondent is contending in its own objections.  
8 They are challenging, I should say, that particular  
9 finding.

10 Yfen is a Chinese National who recently, in  
11 2009, moved to Indiana and was hired by Belterra in  
12 2010 as a guestroom attendant. Her responsibility  
13 was for cleaning hotel guestrooms, but she injured  
14 her back in April of 2012 while making a bed.

15 Yfen was restricted by her doctor to lifting  
16 not more than ten pounds. As a result, Belterra  
17 placed her in what was called transition laundry  
18 room attendant services. However, there was more  
19 frequent and heavier lifting performed in the  
20 laundry room attendant position than in the  
21 previous guestroom attendant position.

22 Not surprisingly, Yfen complained to the  
23 supervisors that the pushing of the laundry cart  
24 was overly difficult, and she asked to be  
25 reassigned. The reassignment did not take place,

1 and on April 11, 2013, the doctor issued a  
2 permanent restriction to Yfen.

3 Within 15 days Belterra sent Yfen a letter,  
4 requesting a meeting. At the meeting Yfen was  
5 given only a two-page list of available jobs that  
6 she could apply for and told she would have 30 days  
7 in which to do so. She was told she had to work  
8 with the HR department within 30 days, and she was  
9 given a telephone number to call and was told she  
10 would face termination if she did not call.

11 Shortly after, Yfen called the safety manager  
12 at her direct private phone number, and the call  
13 time lasted over 16 minutes. She left voice mail  
14 messages for her to call both the safety manager,  
15 her supervisor, and also the HR representative.  
16 All three were asked by Yfen to call her back.

17 THE INTERPRETER: Repeat that, please.

18 MR. HEALY: She made phone calls.

19 THE INTERPRETER: Who is she?

20 MR. HEALY: Yfen made calls to three persons.  
21 To Smela, the safety manager, and to her  
22 supervisor, and to the HR person. And none of  
23 these three ever returned her phone call, and thus  
24 she was terminated by Belterra for failing to  
25 contact them within 30 days.

1           Judge Ryker determined that Yfen was able to  
2 perform the essential functions of at least one of  
3 the jobs that she was interested in, that of  
4 barista.

5           THE INTERPRETER: Barista? Did you say  
6 barista?

7           MR. HEALY: Barista, yes, serving coffee.

8           THE INTERPRETER: Yeah, I know.

9           MR. HEALY: The job description that we found  
10 and was submitted as an exhibit showed that bending  
11 was required one to two hours a day and lifting one  
12 to two hours per day, which the judge felt could be  
13 accommodated.

14           Now, in respondent's brief they cite cases  
15 trying to show that it's up to the complainant to  
16 request and to prove a needed reasonable  
17 accommodation. Those cases are inapposite to the  
18 present case because here there wasn't even a job  
19 offer made. How do you ask for an accommodation,  
20 if you're not given any information at all about  
21 the job or its requirements or its duties?

22           Those job duties that were contained in  
23 Complainant's Exhibit 22 for each of the jobs were  
24 never shown to the complainant. I had to request  
25 them many months after the fact during discovery.

1           Belterra is placing Yfen in her Catch-22. You  
2           have to tell us what accommodation you need, but  
3           we're not going to tell you what the job entails or  
4           its duties, requirements, or essential functions.  
5           That's not consistent with the rules under the ADA.

6           Judge Ryker, in her finding-of-fact 33, said  
7           correctly that respondent's attempted accommodation  
8           was no accommodation at all. The case law that  
9           Judge Ryker cited states that it's not an  
10          employee's responsibility to repeatedly prod a  
11          reticent employer.

12          Respondent's 30-day application period and  
13          vague invitation to provide assistance offered  
14          complainant nothing beyond what she could have  
15          achieved on her own by simply applying for new  
16          jobs.

17          THE INTERPRETER: Repeat that, please.

18          MR. HEALY: Yes. Respondent's application  
19          period and vague invitation to provide assistance  
20          offered complainant nothing beyond what she could  
21          have achieved on her own by applying for new jobs.

22          Belterra did not explain why it did not extend  
23          complainant's 30-day period for a reasonable period  
24          to allow for possible future compatible vacancies.  
25          This is not consistent with the ADA, and it is a

1 violation of the Indiana Civil Rights Law.

2 None of the cases that respondent cites in its  
3 brief has a fact situation where a complainant is  
4 offered no job whatsoever.

5 Now, with respect to the issue of damages,  
6 this is the point of contention we make. The judge  
7 states that beginning in August 2014 she began  
8 seeking part-time work only. Complainant's Exhibit  
9 10 lists a large number of employers to which she  
10 applied for full-time work. The transcript  
11 contains some vagaries about this issue, but  
12 complainant is here today and could answer the  
13 simple question as to whether or not she looked for  
14 full-time or part-time positions.

15 The complainant has also objected to the  
16 finding that denies front pay to the complainant.  
17 We are all in agreement that front pay is an  
18 equitable remedy that can be awarded as future pay  
19 when reinstatement is not appropriate and  
20 compensates an employee for expected wage losses in  
21 the future.

22 Unfortunately, the ALJ cited federal law in  
23 making her determination that the complainant needs  
24 to provide information necessary for her to  
25 calculate the front pay award. Judge Ryker is

1 incorrect because it is Indiana State law, not  
2 federal law, which controls the interest rate.  
3 There is no clear federal authority regarding an  
4 actual discount rate under the Civil Rights Law.

5 According to the Gary Community School case,  
6 which you have, we look at several factors,  
7 including the length of employment, permanency of  
8 the position, nature of work, age and condition of  
9 employee, possible consolidation, life expectancy.

10 Go ahead. Hello? Did we lose the connection?  
11 We may have lost the connection. Translator, can  
12 you translate?

13 (Discussion outside the record.)

14 MR. HEALY: The length of prior employment,  
15 permanency of position, availability of other work  
16 opportunities, employee's duty to mitigate,  
17 possible increase in salaries and methods to award  
18 net present value.

19 THE INTERPRETER: Okay. Okay. Okay. Please,  
20 tell me those factors three at a time, please.

21 MR. HEALY: All right. Length of prior  
22 employment, permanency of position, nature of work.

23 CHAIR RAMOS: Can you hear, translator?

24 MR. HEALY: Can you hear me?

25 THE INTERPRETER: Hello.

1 CHAIR RAMOS: Can you hear us okay? We may  
2 have to hang up and redial.

3 THE INTERPRETER: Are you still there? Can  
4 you hear me? Hello.

5 MR. HEALY: I'm here. Can you hear me?

6 THE INTERPRETER: Are you still there?

7 CHAIR RAMOS: We'll pause.

8 (A recess was taken.)

9 THE INTERPRETER: Hi. I'm Carmen again. I'm  
10 not sure what went wrong, but I'm still here and  
11 I'm ready to continue.

12 MR. HEALY: Your Honor, I lost the connection  
13 at approximately 1:56 p.m. Would you please take  
14 note of that.

15 CHAIR RAMOS: How much time does that leave?

16 MR. HEALY: It's now approximately 2:05, so I  
17 think we're closer to ten minutes there.

18 CHAIR RAMOS: I'm fine with ten.

19 MR. HEALY: Thank you.

20 In the case of McKnight versus General Motors,  
21 the Court invited the parties to file briefs on the  
22 issue of front pay. The appellate Court denied  
23 front pay based on the employment history and  
24 speculative nature of the award.

25 In this case the award is not speculative

1 because we used the same five or six year period  
2 that Yfen spent looking for work after her time  
3 that she was terminated.

4 THE OPERATOR: Interpreter has left the  
5 conference. You are the only person in the  
6 conference. Interpreter has joined the conference.

7 THE INTERPRETER: Okay.

8 MR. HEALY: The Indiana State interest rate is  
9 8 percent as a default. This is under Indiana Code  
10 Title 24, and says that if we don't provide a  
11 statutory rate by contract, it goes to 8 percent.  
12 Under the State law it was not necessary for the  
13 complainant to provide an equation prior to the  
14 close of the hearing.

15 In this case the judge chose to use a  
16 different interest rate, which is closer to the  
17 federal rate. In electing to use it, the judge  
18 already determined the applicable interest rate to  
19 use for the rest of the calculations.

20 The ICRC, therefore, has options. If you take  
21 the federal interest rate, if you think it is too  
22 low and the result is a front pay award that's too  
23 high, you can use the default interest rate of  
24 8 percent. The matter should properly, therefore,  
25 be remanded back to the administrative law judge

1 for proper calculations.

2 THE OPERATOR: Interpreter has left the  
3 conference. You are the only person in the  
4 conference. Interpreter has joined the conference.

5 THE INTERPRETER: I'm not sure what was going  
6 on. Okay.

7 MR. HEALY: This was actually done in the  
8 Indiana Gary case in which the trial court  
9 requested additional briefing on the front pay  
10 award and parties submitted additional materials.

11 We are not seeking a windfall amount, but we  
12 are asking that the front pay award be considered  
13 in the interest of justice as part of the make  
14 whole remedy to the complainant.

15 Our front pay calculations were presented to  
16 the administrative law judge at the conclusion of  
17 the hearing. We have no objection to remanding it  
18 for a proper entry regarding the appropriate  
19 discounted rate.

20 Thank you very much.

21 CHAIR RAMOS: Thank you, Counsel Healy. We  
22 will hear now, please identify yourself and your  
23 role, please.

24 MR. PETTYGROVE: Interpreter, can you hear me  
25 okay?

1 THE INTERPRETER: Yes. Good afternoon.

2 MR. PETTYGROVE: Good afternoon. My name is  
3 Joseph Pettygrove. I'm with the law firm of  
4 Kroger, Gardis & Regas, and I represent the  
5 respondent, Belterra Casino Resort. My client and  
6 I both appreciate the time and opportunity to  
7 further discuss this case.

8 At this point the issues have been narrowed,  
9 as the process is designed to do. We're talking  
10 about a failure-to-accommodate claim, and more  
11 specifically the ALJ's finding that Belterra should  
12 have given Ms. Dusan an open barista position at  
13 its coffee shop despite her physical limits.

14 THE INTERPRETER: Speak up and then pause,  
15 please. Don't give me too much material at a time,  
16 please.

17 MR. PETTYGROVE: I will try.

18 THE INTERPRETER: Speak up and pause, please.

19 MR. PETTYGROVE: At this point this is a  
20 failure to accommodate. Do you need me to repeat?

21 THE INTERPRETER: Yes, because I did not get  
22 what you said.

23 MR. PETTYGROVE: At this point this is a  
24 failure-to-accommodate case. Like any  
25 accommodation case, the gist of the argument here

1 is that the employer could and should have done  
2 more than it did to help the claimant.

3 There is inherent appeal in that argument,  
4 because at least in an abstract sense anybody can  
5 always do more. Someone can always spend more  
6 time, more money, more energy on a project. But  
7 the law of accommodations doesn't require employers  
8 to exhaust all possibilities. That's an  
9 unrealistic standard.

10 The law requires employers to do what's  
11 reasonable. And the law measures reasonableness  
12 based not on abstract principles or good intention,  
13 but on specific facts and evidence in the record.

14 The ALJ found that it would have been  
15 reasonable for Belterra to put Ms. Dusan in a  
16 barista position despite her restrictions and  
17 limitations.

18 THE INTERPRETER: Repeat, that please.

19 MR. PETTYGROVE: The ALJ found that  
20 reasonableness required Belterra to place Ms. Dusan  
21 in a barista position.

22 COMMISSIONER BLACKBURN: What kind of  
23 position?

24 MR. PETTYGROVE: Barista, coffee shop  
25 employees.

1 COMMISSIONER BLACKBURN: Thank you.

2 MR. PETTYGROVE: The ALJ's conclusions are  
3 based on second guessing Belterra's legitimate  
4 nondiscriminatory business standards, and they  
5 don't satisfy the plaintiff's burden of proof.

6 THE INTERPRETER: Repeat the sentence, please.

7 MR. PETTYGROVE: I will try. The ALJ's  
8 conclusions are not founded on substantial and  
9 reliable evidence, but second-guess the company's  
10 legitimate nondiscriminatory standards.

11 Briefly, on damages, because I want to spend  
12 most of my time talking about why there is no  
13 liability in the first place, there is a front pay  
14 argument and a back pay argument.

15 Back pay are the wages that Ms. Dusan claims  
16 she should have been paid between the date of her  
17 termination and the date of your decision, so  
18 backwards from the date of your decision. And  
19 front pay is the wages she's claiming she should  
20 have received from today forward to make up for  
21 wages that she won't be making.

22 THE INTERPRETER: I'm sorry. What was the  
23 front pay? What is the definition one more time,  
24 please?

25 MR. PETTYGROVE: Front pay is supposed to

1 measure lost wages from the date of your decision  
2 here forward.

3 THE INTERPRETER: I cannot hear you well.

4 MR. PETTYGROVE: Front pay is supposed to  
5 measure the damages from the date of your decision  
6 today going forward.

7 The judge discounted her back pay calculation  
8 based on her finding that Ms. Dusan limited her job  
9 search to part-time work beginning in August of  
10 2014. The judge based that conclusion on Exhibit  
11 R21.

12 R21 is a plan that was developed by Ms. Dusan  
13 with two State of Indiana employees after her  
14 separation as part of her efforts to get new  
15 employment. She testified that she completed this  
16 form with the assistance of those two vocational  
17 rehabilitation professionals, as well as her  
18 husband, who was with her at the time.

19 THE INTERPRETER: The she is the complainant,  
20 yes?

21 MR. PETTYGROVE: Yes, yes.

22 THE INTERPRETER: Who is she?

23 MR. PETTYGROVE: Ms. Dusan.

24 THE INTERPRETER: She is the complainant?

25 MR. PETTYGROVE: Correct.

1 THE INTERPRETER: Okay.

2 MR. HEALY: This is a detailed document,  
3 reflecting careful thought, signed by Ms. Dusan,  
4 and it says no fewer than five times that as of  
5 August of 2014 she was looking for part-time work  
6 only.

7 The judge's conclusion is based on specific  
8 and reliable evidence. The only suggestion of  
9 full-time work search after that date is a  
10 collection of fliers from job fairs. And I will  
11 rest on our brief, in the interest of time, on the  
12 rest of that issue.

13 As to front pay, the law does not calculate it  
14 by matching the same amount of time awarded for  
15 back pay.

16 THE INTERPRETER: I'm sorry. Is it back pay  
17 or front pay?

18 MR. PETTYGROVE: Front pay is not calculated  
19 by matching the period of time given for back pay.

20 While complainant was not required to present  
21 a formula at the hearing, she was required to  
22 present evidence, evidence that lines up with the  
23 factors spelled out in the Gary Community School  
24 decision.

25 She has the burden of proving that she could

1 keep working for six more years after today by  
2 pointing to specific evidence. The reality is she  
3 has not worked since April of 2013; so any award of  
4 front pay would be speculative.

5 Moving from damages to liability, in the  
6 interest of time, there's been a lot of focus on a  
7 three-day period, April 26 of 2014, which was a  
8 Friday, through April 29, a Monday. Translator?

9 THE INTERPRETER: Repeat that, please. What  
10 are those three days for?

11 MR. PETTYGROVE: There has been much focus on  
12 the period of time from Friday, April 26, through  
13 Monday, April 29.

14 THE INTERPRETER: 2014?

15 MR. PETTYGROVE: Correct.

16 The record is full of quite a bit of evidence  
17 showing that Belterra was working with Ms. Dusan's  
18 injuries for a full year before that time,  
19 coordinating doctors appointments, getting her  
20 rides.

21 The record is full of evidence and  
22 unchallenged findings that she continued to voice  
23 pain, even when management gave her light duty  
24 clearly within her worker's comp restrictions.

25 Belterra had been work working with Ms. Dusan

1 during this one-year period through a fairly  
2 significant language barrier. It's important to  
3 keep that context in mind when thinking about the  
4 phone calls that Ms. Dusan insists she made on a  
5 Friday and a Monday in April.

6 It's also important to remember, and this is  
7 something that did not come up in Commission  
8 counsel's presentation, in that final meeting on  
9 Friday, the 26th, Ms. Dusan was also told keep  
10 reporting to work in your light-duty assignment  
11 during this next 30 days.

12 THE INTERPRETER: I'm sorry. I did not hear  
13 you.

14 MR. PETTYGROVE: Ms. Dusan was also told in  
15 that April 26 meeting to continue reporting to her  
16 light-duty assignment for the next 30-day period.

17 She did not do so. There is no dispute about  
18 that. She acknowledged that she stopped reporting  
19 to work, did not report it, but didn't feel like  
20 she could continue coming to work, so she stopped.

21 So with our 20/20 hindsight today, we can  
22 forensically look back and see where the  
23 communication broke down. But this notion that  
24 Belterra just wrote her off, that's not consistent  
25 with the facts. Belterra doesn't write employees

1 off. Belterra does make reasonable, even if  
2 difficult, business decisions.

3 Now, the law is clear, and I don't understand  
4 there to be any dispute, even when the employer is  
5 at fault for a breakdown in the interactive  
6 process, the employee, pressing a  
7 failure-to-accommodate claim, still has the burden  
8 of putting forth substantial and reliable evidence  
9 that she was qualified for whatever alternative  
10 position she claims she should have received.

11 And while Ms. Dusan may have genuinely and  
12 with all good intentions believed she could do most  
13 of the barista position, the facts and evidence  
14 show otherwise.

15 There were two independently dispositive --  
16 let me rephrase that. There were two reasons,  
17 either of which standing alone show she could not  
18 perform the position under the reasonableness  
19 standard.

20 One is the language barrier, which has nothing  
21 to do with the disability or an accommodation  
22 obligation. The second is the lifting restriction.

23 THE INTERPRETER: What was that? Language,  
24 and what is the second thing?

25 MR. PETTYGROVE: Lifting restriction.

1           And as I see, I am running short on time. I  
2           am going to rest largely on the briefs for these  
3           points, but I have just a few more words.

4           Translator?

5           THE INTERPRETER: What was said? I thought  
6           you said you want to say something.

7           MR. PETTYGROVE: I do. Would you please  
8           translate for Ms. Dusan that I am going to largely  
9           rest on our briefs but have just a few more words  
10          to say.

11          (Translating.)

12          MR. PETTYGROVE: The law is quite clear that  
13          an employer gets to set performance standards for  
14          its employees. And the law is equally clear that  
15          neither --

16          THE INTERPRETER: Stop, please.

17          MR. PETTYGROVE: Go ahead.

18          (Translating.)

19          MR. PETTYGROVE: -- the HR representative in  
20          this case, Tricia McAlpine, who was responsible for  
21          helping Ms. Dusan find a new job.

22          THE INTERPRETER: Repeat the name, please.

23          MR. PETTYGROVE: Tricia McAlpine.

24          She testified, based on her experience with  
25          Ms. Dusan as an HR representative in the casino

1 industry and as an employee of Belterra, that  
2 Ms. Dusan's communication skills were not  
3 sufficient for front-of-house positions. We've  
4 highlighted in our brief at least five separate  
5 sections in Exhibit R21 where her vocational  
6 counselors agreed.

7 Absent evidence that the company applied that  
8 standard in a discriminatory manner, the case law  
9 makes clear that the employer's judgment is  
10 entitled to deference.

11 The same is true when it comes to picking  
12 which functions of a job are essential functions  
13 for disability purposes. In Commission counsel's  
14 brief he refers to the Basinth case from the  
15 Seventh Circuit.

16 THE INTERPRETER: I'm sorry. Can you repeat  
17 that, please?

18 MR. PETTYGROVE: Yes. I'll rephrase.

19 The case referred to by Commission counsel  
20 makes this clear. The employer presents evidence  
21 of which functions are essential, and the job  
22 description, along with Lee Smela's testimony,  
23 makes clear that lifting is an essential function  
24 for baristas.

25 The case law also makes clear, unless there's

1 evidence that the employer applies those standards  
2 differently or doesn't really believe them, the  
3 employer's judgment controls.

4 I'll wrap up as simply and bluntly as I can.  
5 The ALJ and anybody else may have decided that the  
6 complainant's communication skills and lifting  
7 abilities were enough for their business, but  
8 Belterra legitimately and nondiscriminatorily made  
9 the judgment that her abilities did not meet its  
10 criteria.

11 Thank you very much for your time and allowing  
12 me to move around the room, and I'll end for now  
13 with that.

14 CHAIR RAMOS: Before we go into rebuttal, are  
15 there questions from the Commissioners?

16 COMMISSIONER BLACKBURN: I have one question.  
17 Regarding the reporting for work duty during the  
18 30-day period, would someone clarify whether or not  
19 she did or should have reported for work during  
20 that period.

21 MR. HEALY: Your Honor, the answer to that  
22 question --

23 CHAIR RAMOS: Do we want to translate? Did  
24 you understand that, translator?

25 THE INTERPRETER: I didn't hear anything at

1 all, to be honest. I'm sorry. I didn't hear  
2 anything.

3 CHAIR RAMOS: The question was what was the  
4 understanding of the employer in having to report  
5 to work during that 30 days.

6 THE INTERPRETER: What is the complainant's  
7 understanding of what? I'm sorry.

8 CHAIR RAMOS: Her reporting to work in that  
9 30-day period.

10 THE INTERPRETER: Okay. (Translating.)

11 CHAIR RAMOS: That was a question. Do you  
12 want to answer that question?

13 MR. HEALY: The answer to the question comes  
14 from Respondent's Exhibit No. 11, which I just  
15 showed you a copy of. This is an important letter.  
16 It was sent to Yfen after the April 26 meeting.

17 There is nothing in that letter which states  
18 that Yfen is to report to work at any time after  
19 April 26 and before she comes back on May 27. It  
20 simply is not in that letter, and Yfen did not  
21 testify that she was told that she had to report  
22 back to work after April 26.

23 MR. PETTYGROVE: If I may?

24 CHAIR RAMOS: Sure.

25 MR. PETTYGROVE: Exhibit R11 states "We will

1 continue to make transitional work available to you  
2 in the laundry with a work schedule of," and then  
3 it goes on. "All company policies continue to  
4 apply to your continued employment."

5 And I am confident when I deposed Ms. Dusan  
6 several years back, and I believe in the hearing as  
7 well, she testified under oath she understood she  
8 was expected to continue coming to work.

9 It's a massive record. I don't have it at  
10 hand. But if you'd like us to follow up by  
11 pointing that to you in the record, I would be  
12 happy to.

13 CHAIR RAMOS: Translator?

14 THE INTERPRETER: I did not get what she said.

15 CHAIR RAMOS: You are translating from Counsel  
16 Pettygrove.

17 THE INTERPRETER: Translate what?

18 MR. PETTYGROVE: There is testimony in the  
19 record from Ms. Dusan, acknowledging she understood  
20 she was supposed to continue coming to work.

21 CHAIR RAMOS: I'm not sure that answers your  
22 question; so let's go into rebuttal, and we can  
23 include any of those arguments that you want in  
24 your rebuttal, please.

25 MR. HEALY: Thank you. First, I want to say

1 that the letter does not give a command  
2 specifically to the complainant that she must  
3 continue to work. In fact, Ms. Dusan did have to  
4 go to the hospital during that time. Even if this  
5 is taken to be an opportunity to make transitional  
6 work available, it was not interpreted by us as  
7 being an order to return to work.

8 An award of front pay is not speculative  
9 simply because Yfen could not find a job. Let's  
10 not forget that employers may not want to have a  
11 Chinese National, speaking little English, or  
12 having a serious disability.

13 There is another document attached to  
14 Complainant's 22, which is the job of a teacher  
15 assistant working 32 to 40 hours a week, which  
16 Dusan applied for. This was June 15, 2016. It's  
17 part of Complainant's 22.

18 Back to Respondent's 11. If it was so  
19 important for Yfen to be working throughout the  
20 time, and she didn't show up for work, they could  
21 have terminated her before May 27, 2013. But they  
22 did not.

23 Counsel brought up the issue of the barista  
24 position. He mentioned language barrier and  
25 lifting restrictions. The judge wrote that any

1 first-time barista would need to learn the  
2 vocabulary through on-the-job training. Translate.

3 THE INTERPRETER: I'm doing that now.

4 MR. HEALY: Sorry. I don't mean to be rude.

5 THE INTERPRETER: Okay. Gosh. What was it?  
6 Repeat that, please.

7 MR. HEALY: The judge wrote any first-time  
8 barista would need to learn the vocabulary through  
9 on-the-job training. Requiring her to already know  
10 the vocabulary imposes an unfair set of criteria by  
11 virtue of her having a disability, which would  
12 violate the Indiana Civil Rights Law.

13 With regard to the lifting, in the barista  
14 position such lifting or carrying was substantially  
15 less than that for either the guestroom attendant  
16 or for the laundry room attendant, Complainant's  
17 Exhibit 22. And that's where the term, reasonable  
18 accommodation, comes in.

19 I'm sorry. You lifted up your hand. What  
20 does that mean, sir?

21 CHAIR RAMOS: You have five minutes.

22 MR. HEALY: That means it can include, for  
23 example, some assistance with lifting. But, again,  
24 the respondent did not offer any kind of reasonable  
25 accommodation other than to hand her a two-page

1 document that doesn't list any functions or  
2 requirements of the job, and they told her call us  
3 back with one of these requests.

4 That was the extent of the assistance that  
5 Belterra gave to Yfen.

6 Thank you.

7 CHAIR RAMOS: You have ten minutes.

8 MR. PETTYGROVE: Thank you. A front pay award  
9 requires the claimant to put on evidence of how  
10 long she would have continued working.

11 Some of the factors that should be addressed,  
12 according to the Indiana Supreme Court, include the  
13 claimant's medical condition and worklife  
14 expectancy. There's no evidence in this record  
15 tied to those factors. And simply saying that she  
16 would have continued to look for work and wanted to  
17 continue working does not meet the burden.

18 THE INTERPRETER: Repeat that, please.

19 MR. PETTYGROVE: The evidence must address the  
20 appropriate factors. And simply saying that  
21 Ms. Dusan would have continued trying to find a job  
22 does not do that.

23 Regarding barista vocabulary, that is an  
24 unfortunate red herring. The job description  
25 doesn't impose any vocabulary requirements, and

1 nobody from Belterra ever said that vocabulary or  
2 memorizing words was an issue.

3 Excuse me, counsel?

4 MR. HEALY: Nothing.

5 MR. PETTYGROVE: Did that complete the  
6 translation?

7 THE INTERPRETER: No, because I forgot what  
8 you said now. Can you repeat, please.

9 MR. PETTYGROVE: Neither the job description  
10 nor Belterra's statements spoke about vocabulary,  
11 which is remembering certain words. The issue has  
12 always been stated in terms of communication skills  
13 broadly.

14 Belterra's conclusion that Ms. Dusan cannot  
15 communicate effectively with its customers is based  
16 on working with her for a year during her injured  
17 period and bringing in translators for  
18 conversations.

19 It's based on extended and repeated  
20 interactions with her where there were  
21 miscommunications. It's based on the fact that  
22 Belterra is in the hospitality industry, and we're  
23 talking about a frontline customer service  
24 position.

25 There is simply no evidence that Belterra

1 applied a different communication skill standard to  
2 Ms. Dusan compared to anybody else. The job  
3 description speaks to the need to communicate with  
4 all types of customers, including difficult  
5 customers. It speaks of the need to move quickly  
6 and keep orders going out.

7 There's nothing discriminatory or irrational  
8 in a company determining that an individual with  
9 Ms. Dusan's communication abilities could not keep  
10 its customers happy.

11 Now, Commission counsel mentioned that the  
12 lifting needs in the barista position take up less  
13 time. The same Seventh Circuit opinion, referenced  
14 earlier by both parties, makes clear that doesn't  
15 determine whether a function is essential.

16 The facts of that case are remarkably similar  
17 to this. They involve a failure-to-accommodate  
18 claim centered on lifting restrictions.

19 Translator, are you waiting on me?

20 THE INTERPRETER: Yes. I thought you need to  
21 continue.

22 MR. PETTYGROVE: Okay. The Cook County case,  
23 basically Cook County, pages 928 through 930,  
24 contain clear and applicable guidance. An  
25 essential function need not encompass the majority

1 of time or even a significant quantity of time to  
2 be essential. The mere fact that others could do  
3 the function does not show that the work is not  
4 essential.

5 And I see I'm out of time, so I won't read the  
6 last line. Thank you.

7 CHAIR RAMOS: Thank you. Thank you, counsel.

8 All right. Commissioners, we had a chance to  
9 listen to the arguments of both the complainant and  
10 respondent. Do you have any questions for either  
11 parties?

12 So we have a few options that we can impose or  
13 decide. One of them is we can uphold the ALJ's  
14 decision of both the decision for award and the  
15 award itself, or we can remand it back for further  
16 investigation, or we can reverse the decision.  
17 Those are our options.

18 We can look at it in two pieces. We can look  
19 at it from the decision of do we feel that this  
20 decision is correct as far as the position where  
21 there was a disability involved, and in fact there  
22 was discrimination. We can make that decision, and  
23 then discuss the award, award possibilities.

24 Again, we can put it into two pieces. I want  
25 to open that up for discussion for us. We don't

1 necessarily have to make a decision today. We can  
2 contemplate that over the next 30 days and come  
3 back. But at least I want to put all the options  
4 on the table. Discussion.

5 COMMISSIONER SLASH: I would say the last  
6 couple of oral arguments that we've heard, I would  
7 like to take the 30 days to render a decision.

8 CHAIR RAMOS: Translator, so that I'm not sure  
9 you heard everything, but we have the opportunity  
10 from a Commission's standpoint to uphold, remand,  
11 or reverse the decision of the ALJ.

12 THE INTERPRETER: I'm sorry. Did you say  
13 reverse the decision of the ALJ?

14 CHAIR RAMOS: So the Commission has the  
15 decision to make of whether we uphold the ALJ's  
16 decision, remand back for further investigation, or  
17 to reverse.

18 So the Commission is having a discussion.  
19 Commissioner Slash has recommended that we take  
20 additional 30 days to review.

21 Any other comments or thoughts on that?  
22 Commissioner Harrington?

23 COMMISSIONER HARRINGTON: I just want to  
24 review one thing. I want to make sure we  
25 understand is the date, the actual termination date

1 relative to the April 26, 27, 28, 29, that time  
2 period, what was the actual date of termination,  
3 and how was that communicated?

4 CHAIR RAMOS: So the question that  
5 Commissioner Harrington has is what was the actual  
6 date of termination. So we ask Counsel Healy for  
7 clarification.

8 MR. HEALY: Yes. Thank you.

9 Counsel Pettygrove has been kind enough to  
10 hand me a document, which I believe is in the  
11 record as an exhibit.

12 A letter was sent to Yfen on May 30, 2013 -- I  
13 don't want to read the entire letter -- stating  
14 that since we have had no contact from you in  
15 regard to our previous meeting, and you have not  
16 applied for any eligible position, we must  
17 terminate your employment effective May 29, 2013.

18 CHAIR RAMOS: Does that answer your question?

19 COMMISSIONER HARRINGTON: Yes.

20 CHAIR RAMOS: Commissioner Jackson, any  
21 questions?

22 COMMISSIONER JACKSON: No.

23 CHAIR RAMOS: Commissioner Blackburn?

24 COMMISSIONER BLACKBURN: No.

25 CHAIR RAMOS: So the discussion on the table

1 is to move this to an additional 30 days for  
2 review.

3 COMMISSIONER JACKSON: So move.

4 COMMISSIONER BLACKBURN: Second.

5 CHAIR RAMOS: All those in favor, signify by  
6 saying aye.

7 (Chorus of ayes.)

8 CHAIR RAMOS: Translator, so the Commission  
9 has decided to move this an additional 30 days for  
10 further review.

11 I don't know that we need to do anything more  
12 specific because the judge is going to come in and  
13 say what do you want to dive into; right? So we're  
14 going to need to provide some question or guideline  
15 around that for her.

16 Translator, discussing with the Commission  
17 what are the ground rules for the continued  
18 evaluation as our ALJ will be asking those  
19 questions.

20 So one of the questions we have is a question  
21 regarding front pay versus, no, front pay and back  
22 pay for further understanding of her decision  
23 mindset that was put together for that. Does that  
24 make sense? Okay?

25 COMMISSIONER HARRINGTON: Yes.

1 CHAIR RAMOS: Okay. Another question? Any  
2 other questions that we have?

3 COMMISSIONER HARRINGTON: Will all the  
4 exhibits that they shared today, including I think  
5 it was labeled R11, and they read off the  
6 termination letter, those would be made available,  
7 as well, for reference?

8 COMMISSIONER SLASH: Yes.

9 CHAIR RAMOS: The other question is to make  
10 sure that all the Commissioners have the relevant  
11 material that was provided today by the counsel.  
12 It should be in the record, but we'll just make  
13 double sure of that.

14 COMMISSIONER BLACKBURN: I do have a question  
15 with regard to an integral issue not really  
16 addressed today of effective communication as  
17 essential to the job performance, and how that  
18 weighed into the decision to terminate as opposed  
19 to accommodate the complainant.

20 CHAIR RAMOS: This is a question for  
21 clarification from counsel.

22 COMMISSIONER BLACKBURN: Somebody.

23 THE INTERPRETER: Do I need to interpret?

24 CHAIR RAMOS: Yes. Are there any other  
25 questions? Okay.

1           So the conclusion on this is we will ask the  
2 ALJ to return so that we can provide her the proper  
3 guidance.

4           (A recess was taken.)

5           (Administrative Law Judge Ryker returned to  
6 the hearing room.)

7           CHAIR RAMOS: We'll continue. Judge Ryker,  
8 the Commission has decided to remand this case back  
9 for further understanding, further clarification.  
10 There are three key points.

11           The first point was the decision process that  
12 you went through in determining the front pay and  
13 the back pay and the specific rates of pay, since  
14 that was addressed in our discussion.

15           The second point has to do with providing some  
16 of the letters and evidence that was provided to  
17 the Commissioners. Specifically, I think, R11 and  
18 the termination letter.

19           And the last point had to do with  
20 understanding the determination of the requirements  
21 for communication as a barista.

22           Is that correct, Commissioner Blackburn?

23           COMMISSIONER BLACKBURN: Yes.

24           CHAIR RAMOS: So we would, at our next  
25 Commissioner meeting, we would like to review those

1           comments, if you can review them or put them into  
2           written form, I guess, so we understand.

3           Any other questions or comments for counsel or  
4           Judge Ryker?

5           Do you have any questions, Judge?

6           JUDGE RYKER: Is it okay with the parties if I  
7           ask a point of clarification?

8           MR. PETTYGROVE: Yes.

9           JUDGE RYKER: With respect to putting it into  
10          an additional written form, are you asking for a  
11          new order?

12          CHAIR RAMOS: We are trying to understand the  
13          elements of the front pay and your process. You  
14          provided a calculation sheet. We're just trying to  
15          understand some of that basis, I guess.

16          COMMISSIONER SLASH: And the difference  
17          between the two; so that if we want to write a new  
18          order, we have a little bit more clarity.

19          JUDGE RYKER: Okay. Thank you.

20          CHAIR RAMOS: All right. Counsel?

21          MR. PETTYGROVE: Does the Commission want  
22          counsel at the next meeting as part of the next  
23          step?

24          CHAIR RAMOS: I don't believe we need you at  
25          the next meeting.

1 MR. PETTYGROVE: Thank you.

2 JUDGE RYKER: And just as a point of  
3 clarification, anything that I submit to the  
4 Commission will be sent to counsel also.

5 MR. PETTYGROVE: Thank you.

6 CHAIR RAMOS: That was the last item we had on  
7 the main agenda. Back to the agenda, we have some  
8 dates that come up for our next events.

9 Translator, thank you for your assistance. We  
10 appreciate that.

11 THE INTERPRETER: Okay. You are more than  
12 welcome. Thank you. Have a good one. Goodbye.

13 CHAIR RAMOS: We have dates coming up:  
14 October 18, November 15, and December 20. Any  
15 conflicts with your schedules, Commissioners?

16 Okay. Any announcements to be made?

17 I think Commissioner Blackburn was honored  
18 with the Governor's award for the Sagamore. What's  
19 the official title?

20 COMMISSIONER BLACKBURN: Sagamore of the  
21 Wabash.

22 CHAIR RAMOS: Sagamore of the Wabash, which is  
23 a great honor for anyone to receive that. So  
24 congratulations to you, Commissioner Blackburn.  
25 That's fantastic.

1           COMMISSIONER BLACKBURN: My thanks to the  
2 Governor. Thank you.

3           CHAIR RAMOS: Are there any public comments?

4           COMMISSIONER JACKSON: Folks in the back, I  
5 think.

6           MS. DEVELAN BLAND: I never came to this  
7 before, and I would like to mention about my case.

8           CHAIR RAMOS: Can you please come up front and  
9 identify your name.

10           Yes, counsel, you may both be excused.

11           So this is recorded, so that you know. Please  
12 identify your name and particular case that you are  
13 affiliated with.

14           MS. DEVELAN BLAND: OrthoIndy.

15           CHAIR RAMOS: OrthoIndy.

16           MS. DEVELAN BLAND: My name is Develan Bland.

17           CHAIR RAMOS: Develan Bland.

18           MS. DEVELAN BLAND: Yes, sir.

19           CHAIR RAMOS: How do you spell the last name?

20           MS. DEVELAN BLAND: B-L-A-N-D. I'm number  
21 two.

22           CHAIR RAMOS: On our list for Commissioners?

23           MS. DEVELAN BLAND: Yes.

24           CHAIR RAMOS: All right. Develan Bland versus  
25 OrthoIndy Urgent Care. Commissioner Slash was

1 assigned that. Go ahead.

2 MS. DEVELAN BLAND: I think it was January. I  
3 was in an accident May 3, and I had, I didn't know  
4 of -- my doctor sent me to OrthoIndy. And I  
5 called, and they told me as long as I get there  
6 before eight. But we didn't go that day. We went  
7 the next day.

8 So when I got there, we got there before  
9 eight. So the lady named Gwen was sitting at the  
10 desk, and she asked me my information, and I gave  
11 it to her.

12 And another lady butted in. Her name was  
13 Angie. And she was very abusive. She talked to me  
14 real bad. There's a camera that was looking at us.  
15 You can just review that camera. And she talks to  
16 the, the security guard is sitting there. And  
17 what's her name, Vanessa, the lady that took our  
18 information? Gwen, then the security guard, and  
19 then Angie.

20 And so Angie storms to the back and goes back  
21 and gets somebody from the back. And I said what's  
22 she going back there for? And so she, Gwen, said  
23 she was going back to get somebody. And I said  
24 okay.

25 And so when the doctor came out, his name was

1 Heath -- Jelen. And so the man, so when she went  
2 to the back, she stayed back there a good 30 or 40  
3 minutes, just enough to talk about what happened in  
4 the front.

5 But, see, I'm talking to the lady that took my  
6 information, you understand. So this lady butts  
7 in. And so the doctor comes in. The man and that  
8 woman come in the front, and then the woman, he  
9 just automatically said we ain't going to see you.  
10 He said you might as well go somewhere else because  
11 we ain't going to see you.

12 I said why. He said we just ain't going to  
13 see you. I mean what. My doctor sent me. Plus I  
14 called before coming. I'm in, if you listen to the  
15 answering service, it says fractures, bones and  
16 sprains. okay. But I put down fracture because I  
17 didn't know fracture was a broken bone because I  
18 was in a car accident, and I hurt my hand. And  
19 I've got proof to show that I hurt my arm, and I'm  
20 still going through trouble with my arm. And they  
21 found out I've got (inaudible) in my arm.

22 So they said -- we got there, they was almost  
23 getting ready to close. And so here comes a  
24 Caucasian couple coming in, a lady pushing her  
25 husband or vice versa, and it was almost time for

1           them to close, and they saw them. But they turned  
2           us away.

3           And that's wrong, you know, especially my  
4           doctor sent me. Plus I got there before time. The  
5           lady talks to me very abusive. Then she runs in  
6           the back. She goes and tells this doctor who's  
7           supposed to see us, the man who is supposed to see  
8           us in the back, and he just comes straight on out  
9           and says I'm not going to see you. I'm not going  
10          to serve you.

11          CHAIR RAMOS: Thank you.

12          The way the process works, you have an  
13          opportunity to present your case to our  
14          Commissioners in front here as far as the public is  
15          concerned. But we are each assigned a case.  
16          Investigators have gone through that process, and  
17          then the Commissioner will review the case. And  
18          then if there are questions in that that are  
19          outside of that, then we will work with the  
20          investigators on that.

21          MS. DEVELAN BLAND: Well, I gave you -- I'm  
22          sorry.

23          CHAIR RAMOS: So let me finish. So she has 30  
24          days to look at that information. If there are any  
25          questions at all, then she has the opportunity to

1 again work with the investigators on that.

2 MS. DEVELAN BLAND: Well, who is mine?

3 CHAIR RAMOS: Commissioner Slash has been  
4 assigned the case.

5 MS. DEVELAN BLAND: Okay.

6 CHAIR RAMOS: Her role is not to investigate.  
7 Her role is to review the facts that have been  
8 presented from the staff, and then make a  
9 recommendation to either uphold whatever the  
10 decision is from the executive director, to remand  
11 it back for further investigation, and you saw some  
12 of that here today, or to reverse. So that's the  
13 process that will happen over the next 30 days with  
14 Commissioner Slash.

15 MS. DEVELAN BLAND: Okay. I just want you to  
16 know I sent you my, I recorded me and Ms. Smith's,  
17 I recorded me and Ms. Smith, and I recorded the  
18 other lady that I talked to, and the recording of  
19 when you call, and they tell you what they  
20 specialize in. Plus the camera is sitting dead  
21 upon us. All you've got to do is look at that  
22 camera, and you will see I'm telling the truth.

23 I had no reason to go off or anything. You  
24 know, I'm coming there for help.

25 Plus they had in my document, it said I got

1 shot or a shot. You know, I said I hurt my arm.  
2 You understand. So you ought to know if I said  
3 shot or -- and, plus, my doctor sent me, plus I  
4 called. And you just can't come out of the back  
5 and tell me I'm not going to see you. For what?  
6 What's the reason why? That's wrong.

7 CHAIR RAMOS: Thank you, and Commissioner  
8 Slash will get that. Do you have any comments or  
9 questions?

10 COMMISSIONER SLASH: No. I just thank you for  
11 coming in an putting a face with a name.

12 MS. DEVELAN BLAND: Well, I just wanted, I  
13 just don't, you all sent me a letter, and I just  
14 wanted to let you know all you got to do is look at  
15 that camera because I'm telling the truth. That's  
16 wrong for them to send me way, and it's out of my  
17 way, wasting my gas, my time, to get turned away,  
18 plus my doctor sent me, and plus I'll line up with  
19 the answering service.

20 You still should have saw me, you understand.  
21 You had no right to turn me away. And then the  
22 other people get there a little bit before, and  
23 then you still see them. You said get there  
24 before. Why did you see them then? You know,  
25 that's wrong.

1 CHAIR RAMOS: Did you request the camera  
2 footage?

3 MS. DEVELAN BLAND: Yes, I did. And you can  
4 hear it on the recorder. Just listen to my  
5 recorder. She's got everything. Just listen to  
6 it. I'm telling the truth.

7 And I kept telling her, and she said, we're  
8 going to pull the footage. I said do that because  
9 that footage is going to tell.

10 I don't know if you can hear us talking, but  
11 you can see the interaction. You know, it upset  
12 me. You know, it made me cry. Why you have me  
13 come way over here? You ain't got no explanation  
14 why you turned me away. You can't do that.

15 But they did, so that's why I came. That's  
16 wrong. That's wrong. And to turn me and my  
17 daughter away, and you're going to take -- I'm not  
18 prejudiced. I don't believe in that stuff. We all  
19 got the same blood. We're going to, you know,  
20 bleed the same. I don't believe in that prejudice  
21 stuff.

22 And I just don't feel that that was right the  
23 way they treated me and my daughter after I done  
24 come all that far and all the pain I'm in. And now  
25 I've got tendonitis in this arm and thrombosis. So

1           they should have saw me.

2           CHAIR RAMOS: Thank you. Any other questions  
3 or comments?

4           COMMISSIONER SLASH: No.

5           CHAIR RAMOS: Any other items for discussion?  
6 Hearing none, the hearing is adjourned.

7           MS. DEVELAN BLAND: I thank you.

8           CHAIR RAMOS: You're welcome.

9           COMMISSIONER SLASH: Thank you.

10          (Hearing adjourned at 3:40 p.m.)

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STATE OF INDIANA                    )  
   )SS:  
 COUNTY OF HAMILTON                )

I, Kathleen Andrews, Notary Public in and for the County of Hamilton and State of Indiana, do hereby certify that the foregoing transcript is a true, full, and complete transcript of the proceedings had.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official notarial seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
 Kathleen Andrews, RPR, Notary Public

County of residence: Hamilton County  
 My commission expires: March 22, 2023