

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**  
69 West Washington Street, Suite 3040  
Chicago, Illinois 60602

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Lourdes ALMAZAN, Complainant	)	
	)	
v.	)	Case No. 2015E014
	)	
LIUNA LABORERS LOCAL UNION 225,	)	Entered: September 8, 2016
Respondent	)	
	)	
	)	

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**ORDER DENYING REQUEST FOR RECONSIDERATION**

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On September 8, 2015, Complainant Lourdes Almazan (“Almazan”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against her former employer, Respondent LIUNA Laborers Local Union 225 (“Local 225”). Almazan alleges that Local 225 terminated her employment because of her age (54 years old) in violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). *See* Cook County Code of Ordinances (“County Code”), § 42-35(b).

After completing its investigation, the Commission dismissed Almazan’s complaint for lack of substantial evidence of age discrimination. *See Almazan v. LIUNA Laborers Local Union 225*, 2015E014 (CCHRC June 1, 2016) (“Dismissal Order”). On June 28, 2016, Almazan filed a timely request for reconsideration (“Request”).<sup>1</sup> After giving full consideration to the additional arguments and evidence submitted, the Commission now denies this Request and affirms its Dismissal of Complaint No. 2015E014 for Lack of Substantial Evidence.

**BACKGROUND**

Almazan devoted three decades to her career with the union. But the situation changed markedly when a colleague became her new boss. From Almazan’s perspective, this new supervisor systematically removed her special titles and extra responsibilities, discharged her without explanation, and then promoted his younger daughter. In contrast, Respondent attributes Almazan’s layoff to a personality conflict between Almazan and her new supervisor, coupled with a reduced workload and new managerial priorities. It is understandable that Almazan nonetheless views her job loss as unfair and believes there must be some legal solution. But the Commission’s authority to intervene in the human resources decisions of private employers in Cook County is limited: it can only redress adverse actions that are done because of discrimination based on a protected category, such as age. Almazan still has not pointed to any evidence that her new supervisor did not genuinely believe his stated reasons for laying her off or

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<sup>1</sup> Local 225 filed a short response opposing reconsideration on July 11, 2016.

that he was motivated by age-based animus. Neither the additional evidence submitted with this Request nor Almazan's critique of her supervisor's perceptions and judgments is reason to revive her claim.

All relevant facts from the investigation and the Commission's legal analysis are set forth in full in the Dismissal Order and incorporated here by reference. This opinion briefly summarizes of the same to provide context for the points raised in the Request and addressed here.

#### Brief Summary of Background Facts

Almazan was employed as a secretary for Local 225 from 2004 to 2015. Before that, Almazan worked for nineteen years at a related entity, Laborers' Health and Welfare Fund for Chicago & Vicinity ("Health & Welfare"). She was hired for the Local 225 position by Russell Schneider ("Schneider"), then its President and Business Manager. Schneider thought highly of Almazan; in 2006, he appointed her as Local 225's Special Representative to Health & Welfare. Almazan also served in the elected office of Recording Secretary for Local 225.

During Almazan's first decade with Local 225, Anthony Cantone ("Cantone") was Secretary-Treasurer. The small staff also included Adolfo Zamora ("Zamora") (then a business agent, later Secretary-Treasurer), two other business agents and, as of 2006, another full-time secretary, Cantone's daughter – Meggen Cantone ("Meggen").

Describing these years, Cantone claims even then he had some problems working with Almazan. Cantone said she was "strong minded," did not take correction well, and would refuse to do what he asked and then go over his head to Schneider. Almazan disputed Cantone's characterization. She also claims that during this time frame, at least once, Cantone (who is the same age as Almazan) teased her for wearing glasses, saying that she was getting old, but Almazan told a Commission investigator that she did not take the comment seriously.

When Schneider retired in the spring of 2014, Cantone was appointed to fill the last year of Schneider's term. Cantone claims that from the very beginning of his tenure as Business Manager, he had difficulties with Almazan's attitude. Some of the issues he describes involved the division of duties between Almazan and Meggen. Others involved Cantone's constraints on Almazan's previously extensive member interactions and autonomous external communications. Cantone's many examples and Almazan's corresponding rebuttals are detailed in the Dismissal Order.<sup>2</sup>

Approximately one year later, Cantone was elected President/Business Manager of Local 225 and, shortly after, on May 8, 2015, he laid off Almazan. No one was hired to replace Almazan; Meggen took over most of her duties. Within the month, Cantone promoted the much younger Meggen to the newly-created position of Office Manager.

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<sup>2</sup> One motivation for Almazan's Request for Reconsideration appears to be her understandable distress that Cantone's criticisms of her, which she believes to be wrong and damaging to her reputation, are memorialized in a publicly available document. See Request, p. 5.

Almazan bases her allegation of age discrimination on her belief that she had seniority over Meggen and useful bi-lingual skills. Prior to filing, Almazan suggested to a Commission investigator that Cantone may also have fired her to help his daughter, Meggen, rise in the union.

### Brief Summary of Legal Analysis

At the conclusion of its investigation, the Commission found that Almazan met the *prima facie* case for age discrimination. Dismissal Order \*12. In brief, she was over 40 years old and suffered an adverse employment action when she was laid off. *Id.* Moreover, while Respondent argued that Almazan failed to perform adequately, that factor of the *prima facie* case is met based on her ten-year history of excellent work and the absence of anything negative in her personnel file. *Id.* Finally, Almazan raised a sufficient inference of age discrimination to pass this stage. Where, as here, an employee over the age of 40 is let go, while a younger employee is retained and assumes the duties of her former colleague, that constructive replacement raises the necessary inference of age discrimination to shift the burden to respondent to articulate a legitimate, nondiscriminatory reason for choosing to layoff the older employee instead of the younger. *Id.* at \*\*12-13.

The Commission found that Local 225 properly articulated legitimate, nondiscriminatory reasons for laying off Almazan. *Id.* at \*13. Respondent explained that Almazan was laid off because there was no longer enough work for two full-time two secretaries due to the “drop in membership and increase in automation.” *Id.* at \*8. To show a drop in membership, Respondent pointed to the Sealy plant closing and Apex layoffs. *Id.* at \*8-9. As for automation, Respondent noted the “new software program for tracking dues payments/collections and Health & Welfare’s improved websites and call lines” reduced the need for staff to handle those duties at the local. *Id.* at \*9. In addition, Respondent explained that Cantone chose to lay off Almazan rather than Meggen because “he found Almazan difficult to get along with, she made him look bad, and she did not follow his directions.” *Id.* at \*14.

The Commission dismissed Almazan’s complaint because there was insufficient evidence that Respondent’s stated reasons were actually a pretext for age discrimination.

As for the reduction in workload based on declining membership, Almazan’s only point of contention was that she was still doing work for the Sealy account when she was let go. Given that objective documents confirmed that the plant closing was imminent, this was not helpful. And Almazan’s claim that members still needed to call or stop by because the websites were confusing, especially for the Spanish-speaking members, did not show pretext. If anything, it showed her disagreement with Cantone’s approach to management on this issue.

As for Cantone’s reasons for picking Almazan for the layoff, the Commission found no evidence that this part of Respondent’s rationale was a pretext. Neither Almazan’s general point that she was agreeable and obedient with Cantone, nor her rebuttals of Cantone’s complaints about specific incidents, provided evidence of pretext. As explained in the Dismissal Order, even if Almazan had evidence that Cantone was objectively wrong about a particular incident or that he displayed poor judgment in his low opinion of her, it would not be enough to show pretext. An employer may terminate a competent employee because he finds her disrespectful or disagreeable or simply because he does not like her.

Not only did Almazan fail to provide any evidence that Cantone did not honestly believe his stated reasons for letting her go, she even provided documentary evidence supporting Cantone's stated rationale. As part of the Commission's investigation, Almazan produced an August 2014 text message showed that the two had an argument so intense that Cantone instructed her to take the rest of the day off to cool down before they next talked. And Almazan's March 2015 email exchange with Zamora provided some support for Cantone's stated criticisms of her independence and also showed that Almazan was aware that Cantone had problems with her (even if she did not understand why or agree).

Finally, the Dismissal Order noted that not only did Almazan fail to meet her burden of pointing to evidence showing pretext, but she also provided an alternative non-discriminatory rationale for her treatment at Local 225. Almazan herself suggested that perhaps Cantone acted unfairly towards her not because of her age, but because he wanted to promote his daughter Meggen's career.

### **REQUEST FOR RECONSIDERATION**

Almazan's Request for Reconsideration sets out a variety of additional facts and arguments, but crucially none of these provide any evidence of pretext in the decision of Local 225 to lay her off. Even the two new points that are most facially relevant do not stand up to scrutiny.

First, contesting Respondent's claim that the layoff was triggered by a reduction in workload, Almazan now asserts that Sealy and Apex matters took only 10 percent of her time. Request No. 7. She further claims that the majority of office work was for the Demolition and Environmental Membership, which had increased in the past two years, thus offsetting the Sealy membership loss. *Id.* at No. 8.

But even if the Commission was to allow complainants another bite at the apple (Almazan's first Sealy-specific argument was rejected in the Dismissal Opinion), this point alone lacks the power to show pretext. Respondent also pointed to the new collections software, which overlapped with Almazan's duties. Also, Cantone repeatedly emphasized his desire that Almazan spend less time helping members with benefits, and he promoted members' use of the help available from advertised websites and call lines. Finally and perhaps most telling: Respondent did not replace Almazan in the office. Cantone did not hire another secretary; instead, he rearranged Meggen's duties and seemingly implemented a less labor-intensive approach in the office.<sup>3</sup> Thus, Almazan's new points on the impact of losing Sealy or even overall membership numbers do not show that saying there was less secretarial work was a pretext.

Second, Almazan claims Cantone was incorrect when he said that Meggen was easier to work with because when he raised a problem with Meggen, she would not carry a grudge. Almazan states in her Request for Reconsideration that "Meggen often got upset and would say that he [*i.e.* Canton] is so stupid on [sic] his decisionmaking[.]" Request No. 14.

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<sup>3</sup> The only hire after Almazan's lay off was a new business agent, hired in September, apparently to fill the gap left a year earlier when Zamora (previously one of three business agents) was promoted to Secretary-Treasurer to fill Cantone's spot after his promotion. *See* Dismissal Order at \* 11.

Taking Almazan's evidence here as true, it suggests that Meggen may have had negative feelings about some of Cantone's decisions. But this does nothing to show that Cantone thought Meggen was difficult to deal with or caused problems for him. Showing pretext requires some evidence that the employer did not believe the reasons he gave for laying off a complainant. This new evidence does not undermine Cantone's statements of how he felt in dealing with Meggen. This is especially true because Almazan does not claim that Cantone even knew that Meggen made these alleged complaints to her coworker.

The Request's remaining points have little relevance and do nothing to show pretext. For example, to rebut Cantone's claim that he had problems with Almazan even during the years he was Secretary-Treasurer, Almazan notes that he repeatedly nominated her for Recording Secretary. *See* Request No. 16. But the document submitted in support, Enclosure 7 (minutes for an April 2012 meeting of the Local 225 Board), shows the routine nature of this act. *See id.* (Cantone seconded her nomination, as he did for many of those nominated for a position, in what seem to be mostly uncontested reappointments). In addition, the Request provides some ambiguous evidence which seems to show Almazan was right about the dispute over when she served as Recording Secretary and the prerequisites for that office. *See* Request No. 3 and Enclosure 3. But that issue was not part of the Commission's analysis or relevant to its decision.

Other parts of the Request inadvertently provide support for Respondent's position. For example, to support his rationale that Almazan made him look bad, Cantone told Commission investigators that Zamora told him that Almazan had asked Zamora to run against Cantone for Business Manager. Dismissal Order \*8. Previously, Almazan had just denied that she was against Cantone running and said she voted for him. *Id.* In the Request, however, Almazan's discussion of Cantone's claim suggests it is true, that she did tell Zamora he should run against Cantone. *See* Request No. 5 ("the conversation only happened because Mr. Zamora was concerned of [sic] some of Mr. Cantone's decision making."). Similarly, the Request addressed Cantone's complaints that when he was Secretary-Treasurer, Almazan would go over his head to Schneider. *See id.* at p. 5. Almazan explained that her communications with Schneider were "never in an attempt to be challenging to Mr. Cantone because he [*i.e.* Cantone] had no authority over my positions." *Id.* Summing up, she said: "My previous boss Russ Schneider would always tell us that he was the boss not Anthony Cantone." *Id.* With this, Almazan confirms both the existence of ongoing authority struggles while Cantone was Secretary-Treasurer and Cantone's right to call the shots once he became Business Manager. In sum, the Request simply does not provide any evidence to suggest that Cantone's stated interpersonal reasons for discharging Almazan were pretextual.

Finally, the Request's closing statements arguably suggest that if Cantone was motivated by any hidden reason, it was nepotism rather than ageism. Almazan states that Cantone saw her as a threat to his "younger secretary" (*i.e.* Meggen) because Almazan was so experienced and so popular among the union members and staff. *See* Request, p. 5 (Cantone was engaged in "calculated actions to lay me off because I was the older of two secretaries. He seen [sic] me as a threat to his younger secretary because of all [my] experience and popularity amongst the members and staff.") To make sense of these statements requires that Cantone have had some reason for wanting to protect the career of the "younger secretary" from the "threat" posed by comparison to Almazan. Almazan previously told Commission investigators that she thought Cantone laid her off to promote his daughter Meggen's career.

Further, nothing in the record suggests any age-discriminatory animus. At some point before he became Business Manager, Cantone occasionally teased Almazan about getting older because she wore glasses; these stray remarks were found not relevant to employment decisions made years later. *See* Dismissal Order \*3. The Request's small extra point – even though Cantone is the same age as Almazan, he only recently needed to get glasses – does nothing to change this conclusion.

### CONCLUSION

For the foregoing reasons, the Commission DENIES Complainants' REQUEST FOR RECONSIDERATION of its Dismissal of Complaint No. 2015E014 for Lack of Substantial Evidence. In accordance with CCHR Pro. R. 480.115, Complainants may seek administrative review of this decision by petitioning the Chancery Division of the Circuit Court of Cook County for a writ of certiorari.

September 8, 2016

COOK COUNTY COMMISSION ON  
HUMAN RIGHTS:



Kenneth A. Gunn,  
Chairperson