

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**

69 West Washington, Suite 3040  
Chicago, Illinois 60602

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Esteban ALVARADO, Complainant	)	
	)	
v.	)	Case No. 2012E016
	)	
HOLUM & SONS, CO., Respondent	)	Entered: January 9, 2014
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**ORDER**

Complainant Esteban Alvarado (“Alvarado”) was laid off by his former employer Respondent Holum & Sons, Co. (“H&S”) in late 2011 with a number of other H&S employees. Alvarado filed this action with the Cook County Commission on Human Rights (“Commission”) on April 17, 2012, alleging that he was not rehired like many of his former coworkers in early 2012 because of his age. H&S asserts that the decision not to recall Alvarado was unrelated to his age. Having completed its investigation, the Commission now determines that there is not substantial evidence of a violation the Cook County Human Rights Ordinance (“Human Rights Ordinance”) and dismisses Alvarado’s complaint.

**Background**

H&S is a small, family-owned manufacturer of custom loose-leaf binders and packaging in Westmont, Illinois. Pos. Stmt. ¶ 1. Like many companies of its scale, H&S contracted during the most recent economic downturn, shrinking from approximately 50 employees in 2007 to just over 20 by mid-2012. *Id.* As its work orders and profitability decreased, H&S responded initially by asking all staff and supervisors to work one day per week without pay and eventually initiated rounds of temporary and permanent layoffs and recalls. *Id.* at ¶ 2.

The H&S plant consists of five manufacturing departments (cutting, silk screening, turned edge, heat sealing and finishing) supported by a shipping and receiving team. *See id.* at ¶ 3; Questionnaire Resp. No. 10. Alvarado began working for H&S in 1977. Compl. ¶ I. According to Alvarado, he worked on the shipping and receiving team and was responsible for preparing boxes for shipping. Alvarado Interview (June 25, 2012). H&S described Alvarado’s job as including taping shipping boxes, packing boxes for shipment, shrink wrapping skids, moving materials from one department to another via a pallet jack and loading and unloading delivery trucks.<sup>1</sup> Pos. Stmt. ¶ 5. The only other member of the shipping and receiving team was Alvarado’s supervisor. Alvarado Interview (June 25, 2012); Questionnaire Resp. No. 10.

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<sup>1</sup> H&S also added that Alvarado would assist with outside maintenance (*e.g.*, shoveling sidewalks) and janitorial work. Pos. Stmt. ¶ 5.

Documents provided by H&S indicate that Alvarado was laid off at least once previously. Investigation Report, Ex. B. An October 21, 2009 letter from H&S Human Resources representative, Jessica Holum, to Alvarado states:

As you know, the economy has been bad for over a year now, and it has had a negative effect on most businesses, including Holum and Sons. Richard [Holum (H&S Owner and President)] and I have been forced to lay-off many of our employees, which has been difficult for everyone concerned.

Currently, we are still feeling the effects of the depressed economy, and keep hoping that things will get better. I know that you have been keeping in touch with Ed Hall [(H&S Director of Production)], hoping that we have enough work to bring you back. Unfortunately, we have so little work that we are struggling to keep our doors open. If and when the economy gets better, and we start getting some orders, we expect to call you back to work.

*Id.* An H&S Termination Report indicates that the effective date of this termination was September 30, 2009, but that Alvarado “will return to work if and when the company can provide for him.” *Id.* at Ex. C.

The Commission’s investigation shows that H&S, in fact, did recall Alvarado to service. H&S compensation records show that Alvarado received biweekly paychecks from as early as December 3, 2010 until October 14, 2011. *Id.* at Ex. D. But once again, H&S laid Alvarado off. A December 8, 2011 H&S Termination Report states that “[o]nce again, due to lack of work, Esteban has been terminated. We have been unable to provide steady employment for him since the end of the fiscal year 9-30-11. . . . At this time, we can no longer continue to carry Esteban as an active employee since it doesn’t appear that we will be able to provide work in the near future.” *Id.* at Ex. E. That same day, Jessica Holum sent Alvarado a letter terminating his employment. *Id.* at Ex. F.

Alvarado was not the only H&S employee on a layoff in late 2011. H&S states that ten other employees were also on a layoff at approximately the same time and returned to their departments at H&S (or not) “on an as-needed basis.” Questionnaire Resp. No. 7.

Alvarado believes that the other H&S employees who were laid off at the same time as him had all been recalled by March 26, 2012. Compl. ¶ I. H&S, however, had not recalled Alvarado. *Id.* at ¶ II.D. Alvarado, who was born on September 2, 1951, and was approximately 60 years old at the time, filed this action with the Commission because he believes that the failure to recall him was improperly motivated by his age. *Id.* H&S did not hire another employee to replace Alvarado, but instead required that Alvarado’s former supervisor assume Alvarado’s duties in addition to his own. Alvarado Interview (June 25, 2012); Questionnaire Resp. No. 6.

## Discussion

The Human Rights Ordinance prohibits any employer from “directly or indirectly discriminat[ing] against any individual in hiring, classification, grading, recruitment, discharge, discipline, compensation, selection for training and apprenticeship, or other term, privilege, or condition of employment on the basis of unlawful discrimination.” Cook County Code of Ordinances (“County Code”), § 42-35(b)(1). Discrimination on the basis of an individual’s age is unlawful. *Id.* at § 42-31 (defining “unlawful discrimination”). Alvarado alleges that H&S unlawfully discriminated against him when it failed to recall him from his most recent layoff. Compl. ¶¶ II, III.

In order to show substantial evidence to support this claim, Alvarado has to establish a *prima facie* case of discrimination consisting of evidence (1) that he is a member of a protected class under the Human Rights Ordinance, (2) that he suffered an adverse employment action; (3) that he was qualified for the position he held and performing to his employer’s satisfaction; and (4) that similarly situated individuals who were not members of the same protected class were treated more favorably. *See McCarroll v. Mulligan Management, et. al*, 2011E002 (CCHRC Jan. 8, 2014); *Grigsby v. Office of the Cook County Public Defender*, 2010E020 (CCHRC Oct. 28, 2013); *Rush v. Ford Motor Co.*, 1995E013 (CCHRC Sept. 13, 2000). Establishing a *prima facie* case of discrimination raises the rebuttable presumption of a violation of the Human Rights Ordinance. *See Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill. 2d 172, 178-79 (1989). But the Commission will only hold a hearing on such a claim if during the course of the Commission’s investigation the respondent cannot articulate a legitimate, non-discriminatory reason for the adverse employment action or the complainant can point to substantial evidence that the respondent’s proffered explanations are pretextual. *McCarroll*, 2011E002 at \*5 n.4.

Here, the Commission’s investigation finds substantial evidence that Alvarado is a member of a protected class under the Human Rights Ordinance by virtue of his age. *See* County Code, ¶ 42-31 (defining “age” to mean “chronological age not less than 40 years”). Moreover, the Commission presumes that not being recalled is just as adverse an employment action as not being hired in the first place and is actionable under the Human Rights Ordinance. Despite producing a personnel file that includes a myriad of written and oral warnings, H&S does not deny that Alvarado performed his job in a satisfactory manner.<sup>2</sup> Resp.

Nonetheless, Alvarado’s claim fails the requirement to proceed further because there is not substantial evidence that H&S treated similarly situated individuals outside of the protected class more favorably. Alvarado was the only H&S employee on the shipping and receiving team aside from his supervisor. There is no evidence that H&S replaced Alvarado on the shipping and receiving team with a younger worker (recalled or not). Instead, the Commission’s investigation shows that H&S has left the position vacant and required the supervisor to take on Alvarado’s duties.

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<sup>2</sup> H&S offers the ambiguous endorsement that Alvarado “performed **to the best of his skill and ability.**” Resp. ¶ 1.A. (emphasis in original). In filing a verified response, the failure to specifically deny an allegation is deemed to be an admission.

Evidence of discrimination is no more forthcoming when the Commission examines the ages of the H&S employees that Alvarado believes were recalled ahead of him. Of these ten employees, eight are over the age of 40 and one is actually a few weeks older than Alvarado. Investigation Report, Ex. A. The demographic distribution of the recalled employees reflects the older skew of H&S's entire workforce. H&S employs three people older than Alvarado, five employees older than 50 years old, ten employees older than 40 and just three employees outside of the protected class. Resp. ¶ II.D; Investigation Report, Ex. A.

While Alvarado can only speculate about the role that age played in the decision not to recall him, H&S articulates three non-discriminatory reasons as for why he has not been hired back:

1. Alvarado "was assigned to the Shipping Department. There are no employees in shipping other than the supervisor and" Alvarado. "There was not enough work for more than the supervisor." Questionnaire Resp. No. 5.
2. H&S "was unable to provide work to" Alvarado "on a consistent basis, and without further lay-offs." Alvarado told H&S Director of Production "not to bring him (Complainant) back to work if he was going to be laid-off against because it messed up his unemployment compensation." *Id.*
3. And H&S's group health insurance provider limits the number of days that a temporarily laid off employee can continue to be covered as an employee to 30 days. *Id.*

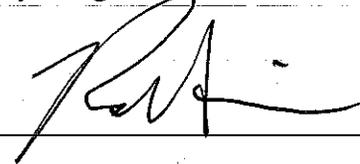
While Alvarado denied in an interview with Commission staff that he ever told H&S Director of Production not to re-hire him in order to ensure continuity of his unemployment benefits (Alvarado Interview (June 25, 2012)), there is not any evidence (substantial or not) that either the first or third explanation proffered by H&S is pretextual. Rather, in his interview with Commission staff, Alvarado offered a fourth and equally nondiscriminatory explanation for why H&S did not recall him. In Alvarado's estimation (and contrary to the central allegation in his complaint), H&S did not call him back to work because they did not like the way that Alvarado would respond to H&S Owner and President, Richard Holum ("Holum"), when Holum was angry. Alvarado may very well be correct, but "[t]his Commission . . . is not an appropriate forum for hashing out an employer-employee dispute, unless that conflict alleges a violation of the Human Rights Ordinance." *Evans v. Tudor, et. al*, 2013E008 (CCHRC Oct. 25, 2013). His reduction of his claim to a personality conflict between himself and Holum fatally undermines any bare allegation that Alvarado's age played an impermissible role.

### Conclusion

For the foregoing reasons, the Commission orders that complaint 2012E016 be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

January 9, 2014

By delegation:

A handwritten signature in black ink, appearing to read 'R. Hakim', is written over a horizontal line.

Ranjit Hakim  
Executive Director of the Cook County  
Commission on Human Rights