

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

Lourdes ALMAZAN, Complainant)	
)	
v.)	Case No. 2015E014
)	
LIUNA LABORERS LOCAL UNION 225,)	Entered: June 1, 2016
Respondent)	
)	
)	

ORDER OF DISMISSAL

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). Specifically, she claims that the decision to lay off Almazan, one of Local 225’s two secretaries, and keep the less qualified 31-year-old secretary, was age discrimination.

The Commission has completed its investigation and, for the reasons set forth below, now dismisses Almazan’s complaint for lack of substantial evidence of age discrimination.

BACKGROUND

For over eleven years, Lourdes Almazan was employed by Local 225 as a secretary at its small administrative office in Willow Springs, Illinois. Compl. ¶ I; Resp. ¶ I. Local 225 is one of fifteen locals affiliated with the Construction and General Laborers’ District Council of Chicago & Vicinity (“Chicago Laborers”), which in turn is part of the Laborers’ International Union of North America (“LIUNA”). *See* Chicago Laborers, online at <http://www.chicagolaborersdistrictcouncil.org/affiliated-locals.html> (visited May 4, 2016). LIUNA locals are run by officers who are elected by the members every three years. Cantone Interview (Jan. 22, 2016); Investig. Rep., Exh. D (Uniform Local Union Constitution of the Laborers’ International Union of North America) (2011) (“Union Constitution”).

Almazan was hired by Russell Schneider (“Schneider”), then President and Business Manager of Local 225. Almazan Interview (Nov. 3, 2015). At the time, Almazan was a long-time employee of the Laborers’ Health and Welfare Fund for Chicago & Vicinity (“Health & Welfare”), which provides benefits to members of Chicago Laborers’ local unions. *See* Almazan Interview (Feb. 10, 2016) (worked for nineteen years at “Health and Welfare”); Chicago Laborers’ Pension & Welfare Funds, “Health & Welfare,” online at

<https://www.chicagolaborersfunds.com/?health-welfare.html> (visited May 4, 2016). Schneider recruited Almazan, saying she would be “great for the local.” Almazan Interview (Nov. 3, 2015).

When Almazan started working at Local 225 in March 2004, its small staff consisted of Schneider, Anthony Cantone (“Cantone”) (then Secretary-Treasurer), and three business agents: Hector Anaya (“Anaya”) (also Vice President), Adrian Barrientos (“Barrientos”), and Adolfo Zamora (“Zamora”). Cantone Interview (Jan. 22, 2016).

In 2006, Cantone’s daughter Meggen Cantone (“Meggen”) was hired as a full-time secretary. Cantone Interview (Jan. 22, 2016); Almazan Interview (Nov. 3, 2015). Meggen had worked part-time¹ at Local 225 from 2002 to 2004 when their regular secretary was terminally ill. *Id.* Local 225’s membership increased, and Schneider decided that a second secretary was necessary to handle the additional work. Cantone Interview (Jan. 22, 2016).

When Schneider retired in April 2014, Cantone was appointed to complete his term as President/Business Manager. Cantone Interview (Jan. 22, 2016) (also noting Zamora moved up to Secretary-Treasurer); Almazan Interview (Nov. 3, 2015). Cantone was then head of Local 225’s office and supervisor of the entire staff, including Almazan. Cantone Interview (Jan. 22, 2016). It was his sole decision to lay off Almazan one year later. *Id.*

March 2004-April 2014: The Schneider Administration

During Almazan’s first ten years at Local 225, she was highly valued by President/Business Manager Schneider, who gave her significant autonomy and responsibility, but she did not always work well with Cantone. Schneider seems to have viewed Almazan as more than a secretary. From the start, Almazan spent a substantial amount of time helping members with their questions on health insurance and other benefits. Almazan Interview (Nov. 3, 2015). Schneider wanted Almazan to use her experience and expertise in this way; she was happy to help Local 225 members and received many calls because she was good at it. *Id.*

In approximately 2006 (the year Meggen was rehired), Schneider appointed Almazan as Local 225’s “Special Representative” to represent members at Health and Welfare. *Id.* This unpaid job included not only advising members on Health and Welfare issues, but also assisting members with grievances and sitting in on benefits contract negotiations every three years. *Id.*

Cantone claims that Schneider gave Almazan this formal appointed position so that Almazan would be eligible to hold an elected office in Local 225. Cantone Interview (Jan. 22, 2016). *See* Pos. St., p. 2 (under the Union Constitution, clerical employees are not eligible for union office, but “Union Representatives” are); Investig. Rep., Exh. D (Union Constitution) (qualifications to run for any office in a local union include one year’s employment “in a full-time *official* capacity for the Local Union”) (Art. V, Sec. 4, p. 90) (emphasis added).

¹ According to Cantone, when their secretary passed away, Meggen worked briefly as the office’s sole full-time secretary, but then Schneider laid off Meggen when he hired Almazan. Cantone Interview (Jan. 22, 2016). In contrast, Almazan maintains that Meggen never worked full time at Local 225 before Almazan was hired. Almazan Interview (Nov. 3, 2015) (noting that a full-time position would have required an Executive Board vote).

While the parties differ regarding this rule and related chronological facts, they agree that Almazan simultaneously was employed as a secretary at Local 225 and held the elected office of Recording Secretary and the appointed position of Special Representative. Cantone said that after Schneider appointed Almazan as Special Representative in 2006, she ran for Local 225 Recording Secretary and was elected. Cantone Interview (Jan. 22, 2016). Almazan, though, asserts that she was Recording Secretary of Local 225 from 2000-2015. Almazan Interview (Feb. 10, 2016).

There is additional evidence indicating Schneider's appreciation of Almazan and her work. According to Cantone, Schneider gave Almazan special "perks," including a more lenient rollover system for personal and vacation days and the flexibility to skip lunch and work a seven-hour day. Cantone Interview (Jan. 22, 2016). Also, Schneider would let Almazan use his office if she had a meeting with members. Almazan Interview (Feb. 10, 2016).

During these years, however, Cantone had some concerns about Almazan's treatment of him and her attitude. He described his relationship with Almazan then as "cordial" but "challenging at times" because she was "strong minded," did not take correction well, and did things "her way or no way." Cantone Interview (Jan. 22, 2016). Cantone recalled that when he asked her to do something, she often would refuse and go over his head to Schneider to get her way. *Id.*

Cantone claims this happened even in areas like dues collection where, as Secretary-Treasurer, he had ultimate responsibility and thus supervisory authority. *Id.* As one example, Cantone said that Almazan refused to share the "money payable" job, which involved pursuing companies for failure to withhold and remit union dues. After Cantone sent a notice of non-payment, Almazan would yell at him and Meggen if they followed up on collection without consulting her. Cantone Interview (Jan. 22, 2016). Almazan did not recall it this way. According to Almazan, if she had already sent a letter to a company, she may have told Meggen (without yelling) not to send another letter. Almazan Interview (Feb. 10, 2016).

Describing her relationship with Cantone during this time, Almazan said Cantone sometimes made sarcastic comments, including remarks relating to her age. Almazan Interview (Nov. 3, 2015). Specifically, Almazan said that Cantone made fun of her for wearing glasses, saying that she was getting old. *Id.* Cantone, who is the same age as Almazan, denied doing this. Cantone Interview (Jan. 22, 2016). Almazan's only other example of Cantone's alleged sarcasm was a remark that she was a Communist because she drove a foreign car. Almazan Interview (Nov. 3, 2015). Regarding these comments, Almazan told the Commission investigator, "I didn't take it seriously or think he hated me." *Id.*

May 2014-May 2015: The Cantone Administration

When Cantone first became President/Business Manager of Local 225 in May 2014, it was for the final year of Schneider's three-year term. Cantone Interview (Jan. 22, 2016). To retain the position, Cantone was required to run for election by the members in May 2015. *Id.*

Cantone maintains that he had problems with Almazan's attitude from the outset. He claims, and Almazan denies, that Almazan asked him if she could be Zamora's secretary and

have Meggen be Cantone's secretary. Cantone Interview (Jan. 22, 2016); Almazan Interview (Feb. 10, 2016). Cantone says that he declined this suggested division of assignments and told Almazan that everyone shares in the responsibilities and duties, and that all employees would be working under him and as directed by him. Cantone Interview (Jan. 22, 2016).

Regardless of whether this particular conversation occurred, Cantone told Commission staff that he had ongoing difficulties with what he viewed as Almazan's resistance to sharing duties and following his directions. Cantone Interview (Jan. 22, 2016). Cantone provided numerous examples, starting with shortly after becoming Business Manager, when he noticed that the phones continually rang without being picked up. When he asked Almazan why she was not answering the phones, Almazan replied that Meggen handles the phones and she (Almazan) does the walk-ins. Cantone told her that he expected her to share responsibilities. *Id.* According to Cantone, Almazan then asked Meggen to handle all walk-ins and said she would take all the calls. Although this did not comply with his command to share duties, Cantone said that he never brought up the issue again because Almazan would get angry and upset when confronted. *Id.* Almazan denies that she ever failed to follow or was resistant to Cantone's directions. Almazan Interview (March 23, 2016).

Cantone also disapproved of Almazan's alleged private phone line (the "05" line). Cantone Interview (Jan. 22, 2016). He learned about it while Schneider was still in charge, when the company that printed the business cards for Local 225 called to ask why Almazan had two different cards. *Id.* Cantone claimed that Almazan gave that number out to members she liked and told Meggen not to answer that line. *Id.* Almazan countered that she never told Meggen not to answer the "05" or any other line. Almazan Interview (Nov. 3, 2015). As Almazan explains it, the majority of the phone calls coming into the office were for her; members asked to speak to her because they felt she was helpful. Almazan told members to call her on the "05" line because then she knew the call was for her. *Id.*

In a similar vein, Cantone asserted that Almazan had arranged the office furniture to hide from walk-ins and that, after he became Business Manager, she moved the chairs in the foyer to prevent members from seeing her from the front window or door. Cantone Interview (Jan. 22, 2016). Almazan acknowledged that because of the placement of their desks, Meggen was visible from the front desk while she was not, but she denied Cantone's charge that she tried to avoid members. Almazan Interview (Feb. 10, 2016). Almazan also explained that she had moved chairs in the foyer to be further away from the restroom when she met in the foyer with members. Unlike Schneider, Cantone did not let her use his office for this purpose. *Id.*

In addition, Cantone described two more global problems he had with Almazan from the time he became President/Business Manager: Almazan "refused to communicate with me, went in her own direction [and] was stand-offish," and she "stayed to herself [and] didn't really share information with me." Cantone Interview (Jan. 22, 2016).

Almazan disputed Cantone's view with several counter-examples. Almazan said, and Cantone confirmed, that she asked about and they discussed the health of his other daughter, Aimee. Almazan Interview (Nov. 3, 2015); Cantone Interview (Jan. 22, 2016). Almazan also noted that she was invited to Aimee's wedding. Almazan Interview (Nov. 24, 2015). Cantone responded that he invited everyone in the office to Aimee's wedding in 2011. Cantone Interview

(Jan. 22, 2016). In addition, Almazan stated that she texted him on his birthday, wished him and his family happy holidays, asked about his vacations, and greeted everyone in the office in the morning and when she left for the day. Email from Almazan to Staff (Nov. 17, 2015).

Cantone provided several examples of Almazan's alleged failure to provide him with important information. He claims that on one occasion, Almazan withheld a faxed funeral notice about the death of another local union official's mother. Cantone Interview (Jan. 22, 2016). This is something that Cantone said he should have known about and that he was embarrassed when he learned that he did not. Cantone told Commission staff that he did not mention this to Almazan because it would have turned into an "angry ugly battle." *Id.* A second example involved the annual safety incentive program run by the Chicago Area Laborers-Employers Cooperation and Education Trust ("LECET"). *See* LECET, online at <http://www.lecetchicagoarea.org> (visited May 9, 2016). Cantone claimed that in February or March 2015, when he asked Almazan which union member was the finalist that year, she told him she did not know. Cantone Interview (Jan. 22, 2016). He then learned from Patrick Hosty ("Hosty") at LECET that Almazan already had that information. Cantone said he did not confront Almazan because he had the information he needed. *Id.*

Almazan denies that she ever withheld information or a funeral notice from Cantone. Almazan Interview (Feb 10, 2016). Almazan, in turn, complained that Cantone took away her former role with LECET, cut her off from member information that was necessary to do her job, and excluded her from LECET's annual safety program luncheon, which she had always attended. Almazan Interview (Nov. 3, 2015).

An email exchange between Almazan and Zamora about the LECET issues confirms some of the alleged work relationship problems. Zamora wrote to Almazan that he was "surprised and alarmed" by Almazan's emails and inquiries to Hosty at LECET, and that he needed to speak with her about her outside communications and ability to work as a team within Local 225. Investig. Rep., Exh. U-1 (Email from Zamora to Almazan) (Mar. 16, 2015). Almazan's reply shows that she knew Cantone was dissatisfied with her performance and found it unfair. *See* Investig. Rep., Exh. U-2 (Email from Almazan to Zamora) (Mar. 25, 2015) ("Ever since Russ Schneider retired you and Tony always have a problem with my job. I do not understand what I am doing wrong here and why this is happening!").² In discussing the issue of her communications with LECET, Almazan told Commission staff that she functioned independently in her job at Local 225. Almazan Interview (Feb. 10, 2016).

On August 21, 2014, Cantone and Almazan had a heated confrontation about the scope of Almazan's role. They agree on the basic facts, but differ on the details and who was to blame. In the context of providing assistance to a member, Almazan asked Cantone to use his business

² In her reply to Zamora, Almazan also wrote:

I agree to working as part of a team, but then include me as part of the team. . . .
I come to work every day on time, hardly take days off, help members as much as I can and am still getting reprimanded. I feel this is going to lead to the termination of my job.

Investig. Rep., Exh. U-2 (Email from Almazan to Zamora) (Mar. 25, 2015).

credit card to take the member out to lunch. Cantone Interview (Jan. 22, 2016); Email from Almazan to Staff (Nov. 17, 2015). Almazan told Commission staff that it was part of her duties as a Special Representative to take members to lunch to discuss their issues. Almazan Interview (Feb. 10, 2016).

According to Cantone, when he told Almazan that she could not have the credit card, she became “loud, upset, angry,” saying “you guys” take members to lunch every day, and asking why she could not. Cantone Interview (Jan. 22, 2016). Cantone told Commission staff that he was upset by the incident – both that he had to explain himself to Almazan and that she got angry. *Id.* During this argument, Cantone told Almazan that he no longer needed her services as a Special Representative. Cantone Interview (Jan. 22, 2016). Cantone said that this news made Almazan angrier and “fired up,” and that as she got louder, so did he. *Id.*

In Almazan’s version, Cantone started screaming at her in response to her simple request, saying that he will not tolerate her taking members out to lunch any more. Almazan Interview (Nov. 3, 2015). Almazan asked why not when she claimed that she had done it in the past, and he became angrier and said he needed two secretaries in the office and that from now on, she would answer all the incoming calls. *Id.* Almazan says that she told Cantone that she felt she was going to lose her job and did not know why and he replied, “If you don’t like it you can . . .” Then he supposedly interrupted himself and said, “I am the boss and I can do whatever I want.” Email from Almazan to Staff (Nov. 17, 2015). Almazan said that Cantone was so loud and angry that business agent Hector Anaya told Cantone that it was inappropriate to talk to Almazan that way out in the open office area, and the other business agent, Adrian Barrientos, supposedly called over to ask if Almazan was okay.³ Almazan Interview (Feb. 10, 2016). Almazan denies that she ever got angry or yelled at Cantone during this conversation. Almazan Interview (Nov. 3, 2015). Almazan acknowledged that Cantone may have mentioned taking her “special rep” duties then, but she did not describe it as a focus of the conflict. Almazan Interview (Feb. 10, 2016).

This confrontation was heated enough that Cantone told Almazan to leave the office for the rest of the day so they could “cool off” before talking again. *See* Investig. Rep., Exh. F (text message from Cantone’s number, received by Almazan on August 21, 2014, at 12:16 p.m.: “Things got a little crazy here. It will be best if you take the rest of the day off. Tomorrow after we all cool off we can talk[.]”). Without seeing these texts, Cantone recalled telling Almazan she could step away from the office to gather herself and then come back for the afternoon. Cantone Interview (Jan. 22, 2016). Almazan said she left because it was her lunch hour, and then she received Cantone’s text while she sat in the parking lot calming herself down. Email from Almazan to Staff (Nov. 15, 2015).

Although Cantone’s text told her to leave for the day, Almazan decided to return for the afternoon because Meggen was out, so Almazan felt that she was needed to handle calls and

³ At Almazan’s request, the Commission staff did not interview Anaya or Barrientos. Investig. Rep., Exh. Z (Staff Memo to File (May 25, 2016)). Because Almazan identified the two business agents as witnesses to this important conflict, at the close of the investigation, the investigator called Almazan to confirm that she still did not want the Commission to contact these individuals as part of its attempt to determine the substantiality of the evidence to support her claims. Almazan confirmed that she still did not want them to be interviewed, stating that she does not want to involve the business agents in this case. *Id.*

walk-ins. *Id.* See Investig. Rep., Exh. G (Almazan’s text to Cantone, sent on August 21, 2014, at 12:38 p.m., responding: “Yes it did and I am not going to do that to you and I will return in a few so that I can answer the calls. We can talk tomorrow[.]”). Almazan told Commission staff that when she texted her agreement that things “got crazy,” she meant that Cantone was loud and angry and she was emotionally upset and crying. Email from Almazan to Staff (Nov. 15, 2015). Almazan also said that Cantone never did talk with her about the incident; he just started acting normal again after a few weeks. *Id.*

Sometime later, in August or September 2014, Cantone followed through and took away Almazan’s Special Representative position. Cantone Interview (Jan. 22, 2016); Almazan Interview (Nov. 3, 2015). Cantone told Commission staff that he saw this role as part of the Business Manager’s duty to oversee the collective bargaining agreement, and he took it over. Cantone Interview (Jan. 22, 2016). Cantone told Almazan that he wanted her in the office, dealing with day-to-day office matters, and not representing members at Health and Welfare. *Id.* Cantone viewed Almazan as a secretary, and defined her job as answering phones, handling member walk-ins, collecting and tracking dues, and helping with administrative tasks. *Id.*

In addition to removing the title and more formal tasks (contract negotiations and grievance meetings), Cantone also wanted Almazan to stop helping members with their insurance and benefits issues. Cantone Interview (Jan. 22, 2016). He said that he and Zamora started doing more of this work after he became President. *Id.*; Almazan Interview (Feb. 10, 2016). Almazan claims that Cantone never told her to stop helping Local 225 members with Health and Welfare issues, and that he must have known she was continuing this work. Almazan Interview (Nov. 24, 2015).

This ongoing struggle over the nature and limits of Almazan’s role was on display at a February 2015 staff meeting. It is undisputed that at this meeting, Cantone told Almazan she could no longer hand out her business cards to members, and he did not impose this restriction on any other staff member. Almazan Interview (Feb. 10, 2016); Cantone Interview (Jan. 22, 2016). Cantone said that when he became President, he told Almazan that no one except him, the Secretary-Treasurer and the business agents (*i.e.* everyone except Almazan and Meggen, the secretaries) should use business cards and there would be no business cards at the front window. Cantone Interview (Jan. 22, 2016).⁴ Cantone also told Commission staff that he perceived Almazan as attempting to undermine him by handing out business cards and telling members to call her with their problems. In his opinion, this was the role of the Business Manager/President and business agents, and it was inappropriate for a secretary to do this. *Id.* Almazan stopped handing out her cards after the February 2014 meeting. Cp. Q. Resp. No. 4.

According to Almazan, it was also in this staff meeting that Cantone told her that he did not want her to continue as Recording Secretary because it jeopardized Local 225, without explaining why. Almazan Interview (Feb. 10, 2016). Almazan said that when he asked her not to

⁴ Cantone claimed that he told Almazan this prohibition applied to both of her business cards, including the one with her own line on it. Cantone Interview (Jan. 22, 2016). Aside from the testimony of the parties, the Commission has no other evidence that Almazan had a second business card. See Investig. Rep., Exh. T (the only business card submitted to the Commission by either party shows Almazan as Recording Secretary and provides only the general office number and her email).

run for Recording Secretary, she gave in to his wishes out of respect for him as her boss. Almazan Interview (Nov. 3, 2015). Cantone did not mention ever making this alleged request, which is consistent with his stated belief that Almazan's eligibility for union office was dependent on her Special Representative appointment.

In May 2015, Cantone ran for and was elected to a full term as President and Business Manager of Local 225. Cantone Interview (Jan. 22, 2016). Cantone claims that after the election, Zamora told him that Almazan had encouraged Zamora to run for the position of Business Manager. *Id.* Almazan denied that she was against Cantone holding the Business Manager position, and added that she voted for him. Almazan Interview (Nov. 3, 2015).

The Layoff

On May 8, 2015, Cantone laid off Almazan. Compl. ¶ III; Resp. ¶ III. The Complaint alleges that no reason was given for her termination, Compl. ¶ III, but Almazan later told Commission staff that Cantone had explained that he no longer needed her. Almazan Interview (Feb. 10, 2016). Almazan appears to have understood at the time that she was being laid off rather than fired. Almazan said that she asked Cantone why he did not lay off his daughter Meggen instead, and he replied that he did not want to. Almazan Interview (May 27, 2015) (Intake).⁵ As described next, Cantone claims that he laid off Almazan because there was no longer enough work for two secretaries, and he had ongoing problems with Almazan's attitude and non-compliance.

The Decrease in Workload

Respondent asserts that Almazan was laid off because the secretarial workload at its office had decreased significantly. Resp., Aff. Def. II. Cantone explained that the office no longer needed two full-time secretaries due to a drop in membership and an increase in automation. Cantone Interview (Jan. 22, 2016).

First, Local 225's membership decreased due to changes in two companies that employed many of its members, Apex 3 and Temper Sealy International, Inc. ("Sealy"). Cantone Interview (Jan. 22, 2016). Apex 3 had less work and laid off employees, resulting in a corresponding loss of Local 225 members. *Id. Compare* Investig. Rep., Exh. M (Membership Reports for Apex 3) (2004) (642 Local 225 members at Apex 3) *with* Investig. Rep., Exh. N (Membership Reports for Apex 3) (2015) (down to 261 members).⁶ And Sealy notified Local 225 of its plans to permanently close its facility in Batavia, Illinois in the summer of 2015. *See* Investig. Rep., Exh.

⁵ *See also* Investig. Rep., Exh. H, Letter from Zamora to Almazan (May 13, 2015) (confirming that President/Business Manager Cantone had told her last week that "Local 225 was laying [her] off from [her] full-time position" on an "indefinite" basis). Zamora's letter further stated that "if circumstances warranted, you could be re-employed in a full-time capacity by Local 225 at some point in the future." *Id.*

The Complaint alleges that subsequently, Cantone told union members at a board meeting that Almazan was laid off for "personal" reasons, which he did not explain. Compl. ¶ III. Cantone responded that he meant it was a private matter between the two of them, not something to discuss at a union meeting. Cantone Interview (Jan. 22, 2016).

⁶ *See also* Investig. Rep., Exh. W (Ltr. from Rp. Attorney to Staff) (Feb. 3, 2016) (cover letter for document submission) (providing necessary explanation of documents referred to here as "Membership Reports").

J (Ltr. from Gilbertson to Zamora) (Feb. 18, 2015) (Notice of Facility Closing Update: Sealy anticipates last day of production at its facility in Batavia on July 15, 2015 and permanent shut down on August 15, 2015). While there is some uncertainty as to how many members Local 225 anticipated losing in the Sealy facility closure,⁷ it was a permanent reduction and also followed a significant downward trend in the number of Local 225 members at Sealy.

The Sealy facility closing had a specific impact on Almazan's workload. Cantone Interview (Jan. 22, 2016). One of Almazan's job duties was reviewing Sealy's payroll records to check and post that members' dues had been deducted and sent to Local 225. According to Cantone, this was time-consuming work specific to the Sealy employees because the majority of Local 225's members who were employed elsewhere paid their own dues. *Id.* Almazan asserted, and Cantone agreed, that she was still doing Sealy work at the time she was laid off. Almazan Interview (Nov. 24, 2015); Cantone Interview (Jan. 22, 2016). But there is also no dispute that the facility's closure was imminent, so that this work was coming to an end. *Id.*

Second, Cantone asserted that there was less secretarial work due to increased automation, including Local 225's new software program for tracking dues payment/collection, and Health and Welfare's improved websites and call lines. Cantone Interview (Jan. 22, 2016). Members were encouraged to use Health and Welfare's specialized information sources instead of calling Local 225's office for assistance on health insurance and other benefits. *Id.* Respondent submitted documents to show its efforts to inform Local 225 members of these resources. *See* Investig. Rep., Exhs. O (sample dues receipt) (2015) (large stamp with phone numbers for Health and Welfare and Laborers' Training Center), P (flyer advertising websites for Health and Welfare and Chicago Laborers' Training Center with note re wide distribution to Local 225 members), S (order for member pocket calendar, placed in 2014 for 2015, showing back cover prominently displays website and phone number for Health and Welfare and Laborers' Training Center), T (same for order placed in 2015 for 2016 calendar).

These changes also had a specific impact on Almazan's workload because much of her time was spent tracking dues collection and helping members with Health and Welfare-related questions and problems. Almazan believed, however, that Health and Welfare's resources were insufficient for Local 225's many Spanish-speaking members with limited English proficiency. Almazan Interview (Nov. 24, 2015). Thus, she thought it was still important and necessary for her to provide personal assistance. *Id.* Cantone disagreed, noting that Health and Welfare had its own Spanish-speaking employees to provide assistance. Cantone Interview (Jan. 22, 2016).

Choosing Meggen Over Almazan

Almazan claims she was fired based on her age (then 54) because Cantone chose to lay her off and retain the less qualified 31-year-old Meggen. Compl. ¶ VI. The complaint alleges, and Cantone agrees, that Meggen and Almazan were both secretaries, performed similar tasks, and worked solely in the office and not in the field. Compl. ¶ IV; Cantone Interview (Jan. 22, 2016). The complaint further states that Meggen had less seniority than Almazan and, unlike

⁷ Compare Cantone Interview (Jan. 22, 2016) (stating that Local 225 lost 300 members with the Sealy facility closing) with Investig. Rep., Exhs. K (Membership Reports for Sealy) (2004) (272 Local 225 members employed at Sealy in 2004), L (Membership Reports for Sealy) (2015) (down to 136 members).

Almazan, is not bilingual. Compl. ¶ V. When Almazan was laid off, the approximate age of Local 225's other staff was: Cantone (54), Zamora (45), Anaya (51), and Barrientos (44). Cantone Interview (Jan. 22, 2016).

Cantone countered that seniority was not a factor for this position. Cantone Interview (Jan. 22, 2016). He also disagrees that Almazan even had seniority. *Id.* (noting that Meggen worked at Local 225 for two years before Almazan started); Resp. ¶ V (Respondent denies Almazan had seniority). Nor did he consider Almazan's Spanish-speaking ability important to his decision. Cantone maintains that Spanish-speaking members with limited English would be adequately served by Local 225's other bilingual staff, specifically Zamora, Anaya and Barrientos, and by the Spanish speakers at Health and Welfare. Cantone Interview (Jan. 22, 2016).

Almazan believes she was good at her job. Almazan Interview (Nov. 3, 2015). She said she worked very hard, sometimes working weekends, and was well-liked by the members. *Id.*; Almazan Interview (Feb. 10, 2016). Cantone never suggested that Almazan was anything other than hard-working, but he did say that some members had complained to him about Almazan, saying that she was rude or unhelpful. Cantone Interview (Jan. 22, 2016).

It is undisputed that Cantone never disciplined Almazan, or gave her any formal warnings or reprimands. Compl. ¶ II; Almazan Interview (Nov. 3, 2015); Cantone Interview (Jan. 22, 2016). Cantone admits that he often did not speak to Almazan directly when he had a problem with something she did. Cantone Interview (Jan. 22, 2016). He said it was because he knew from past experience that Almazan would just get angry at his critique, but would not change or follow his directions. *Id.*

Explaining why he did not choose to lay off Meggen, Cantone said it was not because Meggen did everything correctly, but because he was able to talk to her about any problem and get it corrected – she did not hold a grudge; they moved on from disagreements. Cantone Interview (Jan. 22, 2016). In addition to all the specific problems he described having with Almazan, Cantone said that after all these years of her angry behavior, he felt that he had put up with a lot from her, “more than [he] should.” *Id.*

During Almazan's initial conversations with Commission staff, before filing this complaint claiming she was laid off because of her age, Almazan mentioned several alternative motivations. First, Almazan stated that Cantone may have laid her off because he wanted his daughter Meggen to move up in the organization. Almazan Interview (May 27, 2015) (Intake).⁸ A bit later, Almazan said she believes Cantone terminated her because she was so well liked by Local 225 members and he was afraid that she would run against him for Business Manager. Almazan Interview (July 14, 2015) (Intake). Cantone specifically denied this theory. Cantone Interview (Jan. 22, 2016).

⁸ Respondent tried to minimize the impact of the Cantones' father-daughter relationship. *See* Pos. St., p. 3 n.1 (“Ms. Cantone is Mr. Cantone's daughter but . . . had been working as a secretary in the Local 225 office long before Mr. Cantone became Business Manager, and before Ms. Almazan started working there.”).

After Almazan left, for the most part, Meggen took over her duties. Cantone Interview (Jan. 22, 2016). Cantone stated that there are no jobs previously done by Almazan that Meggen does not do. He added that he picked up some of the general office work, and Zamora did more of the financial work. *Id.*

Shortly after laying off Almazan, Cantone promoted Meggen to the newly-created position of Office Manager. Cantone Interview (Jan. 22, 2016). Meggen then received a \$20,000 raise, which increased her annual salary to \$72,800. *See* Investig. Rep., Exhs. C (Minutes of Respondent's Executive Board meeting on May 20, 2015) (showing raise), B (public record of Meggen's 2013 salary of \$52,815). Cantone said that all Local 225 employees received what he called a "routine" salary increase in June 2015. Cantone Interview (Jan. 22, 2016). *See also* Investig. Rep., Exh. C (showing business agents received raises of \$7,800/year).

Almazan asserts that her layoff did virtually nothing to cut Local 225's personnel costs. *See* Email from Almazan to Staff (Sept. 25, 2015) (claiming that combined raises for all staff totaled \$80,000). *See also* Investig. Rep., Exh. A (public record of Almazan's 2013 salary of \$87,333). In addition, Cantone hired a third business agent, Tim Snyder (approximately age 51) in September 2015. Cantone Interview (Jan. 22, 2016). Cantone stated that there were no financial reasons behind Almazan's layoff. *Id.*⁹

DISCUSSION

To determine whether there is substantial evidence of unlawful age discrimination, the Commission uses a modified version of the familiar *McDonnell Douglas* burden-shifting approach, expanded to allow a wider range of evidence to show discrimination. *See, e.g., LaCaria v. Gail's Carriage Inn, Inc.*, 2015E002, *7 (CCHRC Apr. 6, 2016); *Marino v. Chicago Horticultural Society*, 2012E029, *6 (CCHRC Mar. 20, 2015).

Under the Commission's approach, except in the rare case of a direct admission, a complainant must first establish a *prima facie* case of unlawful discrimination. At this stage of the proceedings, complainant must identify substantial evidence to show:

- (1) At the time of the alleged violation, she was a member of a protected class;
- (2) She performed her job satisfactorily;
- (3) She suffered an adverse employment action; and
- (4) Some strongly probative evidence raises the inference that respondent had a discriminatory motive for taking that adverse employment action.

Id. If this first step is satisfied, then the burden shifts to the respondent to articulate a legitimate,

⁹ While the Position Statement did include Local 225's financial situation as part of the motivation for the layoff (Pos. St., p. 6), the Verified Response, signed by Cantone, did not. *See* Resp., Aff. Def. II.

non-discriminatory reason for the adverse employment action. If the respondent provides such an explanation, then the burden shifts back to the complainant. *Id.* To move forward to a hearing, the complainant must be able to point to substantial evidence that the respondent’s proffered explanation is pretextual. *Id.*

1. The *Prima Facie* Case

Almazan easily satisfies the first and third elements of the *prima facie* case. It is undisputed that on May 8, 2015, Almazan was laid off from her position at Local 225 (Compl. ¶ III; Resp. ¶ III), which constitutes an adverse employment action. She was 54 years old at the time, Compl. ¶ VI, so she was well within the protected category for age (40 and over).

As to the second element, Almazan has met the *prima facie* case’s minimal burden for showing adequate job performance. Almazan claims that she met her employer’s legitimate performance expectations. Compl. ¶ II. Going further, Almazan says that she was good at her job, rarely took time off, and was well-liked by Local 225 members. Almazan Interview (Nov. 3, 2015).

Respondent argues that Almazan failed to meet the second element, relying on the many criticisms of Almazan’s performance it now offers to explain her discharge. *See* Resp., Aff. Def. I. At the *prima facie* stage, however, a complainant is not required to provide sufficient evidence to rebut respondent’s proffered nondiscriminatory reasons for discharge; that assessment belongs in the third stage pretext analysis. *See LaCaria*, 2015E002 at *10 (citing *Marino*, 2012E029 at *7). It is undisputed that Almazan was never disciplined or written up for any rule violations or work performance problems. Compl. ¶ II; Almazan Interview (Nov. 3, 2015); Cantone Interview (Jan. 22, 2016). Under these circumstances, Almazan’s own statements about her satisfactory job performance suffice to meet the second element.

The fourth element requires some unpacking. In an age discrimination discharge claim, complainants typically attempt to satisfy the fourth element by showing that an employee in the protected class (40 and over) was replaced by a substantially younger employee. *Marino*, 2012E029 at *7 (citing *O’Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308 (1996)). Where a complainant is laid off rather than fired, however, there is no replacement hire. In typical reduction in force (“RIF”) case, an employer lays off and eliminates the position of a number of employees. Complainants will then try to satisfy the fourth element by showing that similarly situated employees outside the protected class were treated more favorably. *See, e.g., Alvarado v. Holum & Sons*, 2012E016 (CCHRC Jan. 9, 2014) (finding lack of substantial evidence of age discrimination where complainant, who was not among those recalled after a RIF, was unable to identify a substantially similar comparator).

In a single-discharge case where the laid-off employee’s position was eliminated but her duties were shifted to others (sometimes referred to as a “mini-RIF”), the Seventh Circuit has fashioned an alternate approach. A laid-off complainant can raise the inference of age discrimination by showing that her job duties were not eliminated, but rather were absorbed by one or more remaining employees who are outside the protected class. *See, e.g., Merillat v. Metal Spinners, Inc.*, 470 F. 3d 685, 690 (7th Cir. 2006). The inference of discrimination arises from the fact that the complainant was “constructively replaced” by the person who took over

her duties. *Corporate Bus. Cards, Ltd. v. Ill. Human Rights Comm'n*, 2012 Ill. App. Unpub. LEXIS 2124 ¶¶ 38-40 (1st Dist. 2012) (explaining and adopting approach) (citing *Bellaver v. Quanex Corp.*, 200 F.3d 485, 494 (2000)).

Here, Almazan alleges that Local 225 laid her off, but retained the other (less qualified) employee who performed similar tasks, Meggen (under 40). *See* Compl. ¶¶ III-VI. These allegations suggest that Almazan and Meggen were similarly situated and the over-40 Almazan was treated less favorably by being the only one discharged. *See* Comp. ¶¶ III-IV. But while the two were both secretaries, whether they were “similarly situated” for this purpose is debatable. Almazan did not claim, nor is there any evidence, that Meggen had the same kinds of difficulties with Cantone (*e.g.*, conflicts, perceived attitude and compliance problems) as Almazan did.

The Commission finds that the fourth element is met, without need for comparator analysis, using the mini-RIF approach. Cantone stated that after Almazan was laid off, Meggen took over her duties. Cantone Interview (Jan. 22, 2016). That he picked up some of the general office work and Zamora did some of the bookkeeping, *id.*, does not negate the inference of discrimination raised. Also, while one of Almazan’s prior tasks was eliminated (posting Sealy dues) and one reduced (answering members’ health insurance questions), the many responsibilities and duties she formerly shared with Meggen were absorbed into Meggen’s position. *Id.* (stating there are no jobs previously done by Almazan that Meggen does not do now). Thus, Almazan was constructively replaced by the substantially younger Meggen. Accordingly, there is sufficient evidence to show a *prima facie* case of age discrimination.¹⁰

2. Respondent’s Articulated Non-Discriminatory Reasons

Next, Respondent has met its burden of articulating legitimate, non-discriminatory reasons for the discharge by providing justification for the layoff and explaining why Almazan was selected. According to Respondent, Local 225 no longer needed two full-time secretaries. The secretarial workload had decreased significantly as technological systems improved and membership decreased. Resp., Aff. Def. II; Cantone Interview (Jan. 22, 2016). New software reduced the time for tracking dues collection, and members were able (and encouraged) to get benefits information through the Health and Welfare website instead of calling the office. Cantone Interview (Jan. 22, 2016). *See also* Investig. Rep., Exhs. O, P, S. In addition, Local 225 lost hundreds of members due to less work at one employer (*i.e.* Apex 3), and the imminent closure of the Sealy facility where many of its members worked. Cantone Interview (Jan. 22, 2016); Investig. Rep., Exhs. I-N.

¹⁰ In interviews, Almazan added another type of evidence to raise the inference of age discrimination: Cantone’s alleged sarcastic remarks about her age. Even assuming he commented on Almazan’s glasses and said she was “getting old,” Almazan Interview (Nov. 3, 2015), that kind of stray remark is insufficient to suggest an age-based layoff. Not only was the alleged remark remote in time (occurring, if at all, before Cantone became Business Manager), but put in context (*i.e.* Cantone was her age; he also allegedly teased about her “Communist” foreign car), *id.*, the remark was too innocuous to show discriminatory animus. *See, e.g., Carreno v. Kenney, D.D.S., Ltd.*, 2014E006, *8 (CCHRC May 13, 2015) (where no temporal or causal connection between one or more alleged ageist remarks and the adverse action, such remarks do not raise an inference of discrimination).

Second, Cantone gave non-discriminatory reasons for choosing to lay off Almazan rather than Meggen: he found Almazan difficult to get along with, she made him look bad, and she did not follow his directions. Cantone Interview (Jan. 22, 2016). *See also* Resp., Aff. Def. I.

3. Pretext

To prevail at the pretext stage, a complainant must point to substantial evidence that the respondent's articulated reason was not the real reason that she was discharged. "To meet this burden, a complainant must 'identify such weaknesses, implausibilities, inconsistencies, or contradictions' in the employer's asserted justification 'that a reasonable person could find [it] unworthy of credence.'" *LaCaria*, 2015E002 at *10 (quoting *Coleman v. Donahoe*, 667 F.3d 835, 852 (7th Cir. 2012)).

To start, Almazan challenged the need for a layoff. Almazan claimed, and Cantone did not dispute, that she was still working on Sealy dues collection matters when laid off in May. Almazan Interviews (Nov. 3, 2015); Email from Almazan to Staff (Nov. 8, 2015); Cantone Interview (Jan. 22, 2016). This point, however, does not alter the objective evidence from Sealy of its facility's permanent closure, scheduled for August 2015, or Local 225's business records of falling membership numbers. *See* Investig. Rep., Exhs. I, J (letters from Sealy), M-N (Apex-3 members, 2004 and 2015), K-L (Sealy members, same).

Almazan also argued that Health and Welfare's website had not decreased members' calls to Local 225 or reduced her work helping Spanish-speaking members with their benefits questions. Almazan Interview (Nov. 24, 2015). But Cantone was the President/Business Manager of Local 225, and he specifically disagreed with Almazan's assessment. While the parties dispute whether he ever told Almazan to stop helping members with their health insurance (Cantone says he did, she firmly denies it), substantial evidence confirms that Cantone thought this secretarial workload was (and should be) diminishing. *See, e.g.*, Investig. Rep., Exhs. P, S (flyer and pocket calendar showing Local 225 promoting member use of Health and Welfare's website); Cantone Interview (Jan. 22, 2016).

Finally, Almazan pointed to evidence which seems to show that the layoff did little to nothing to reduce Local 225's salary expenses. Email from Almazan to Staff (Sept. 25, 2015). Cantone, however, specifically told Commission staff that saving on personnel costs was not why Almazan was laid off. Cantone Interview (Jan. 22, 2016). *See also* Resp., Aff. Def. II (describing reduced secretarial workload as only reason for laying off one of two secretaries).¹¹

¹¹ In its explanation of the reason for a layoff, Respondent's Position Statement does refer to Local 225's finances as well as the workload. *See* Pos. St., p. 6. But where, as here, a position statement is written by lawyers and not signed by a party, the Commission does not rely on it for evidence, especially where different from witness testimony and a signed pleading. *See Robertson v. AllState-Louis Dodd Agency*, 2013E030, *5 (CCHRC Nov. 20, 2014) (superseded on other grounds) ("Where a complainant's testimony during an investigatory interview contradicts the complainant's pleadings in the complaint, the Commission credits the complainant's live testimony over the complaint.").

Even where an employer does cite financial reasons for a layoff, courts are not quick to find that "a seemingly legitimate business decision was based on discriminatory motive" without evidence that the employer did not believe it needed to cut costs by eliminating the positions it considered extraneous. *Michas v. Health Cost Controls of Ill., Inc.*, 209 F.3d 687, 694-95 (7th Cir. 2000) (where employee claimed that employer's decision to lay off of its

In sum, this investigation did not produce any evidence to show that Respondent's stated reasons for deciding there was not enough work for two secretaries and laying off one were pretextual.

To show that choosing Meggen over herself was discriminatory, Almazan started with the affirmative argument: that she was good at her job and more qualified than Meggen because she had more seniority and was bilingual. This does nothing to show pretext, however, for several reasons. First, in a mini-RIF, it is not enough for an employee to be good at her job. Where the reasons for doing a layoff have not been refuted, the context for assessing pretext shifts slightly because “[i]n a reduction in force, someone has to go.” *Merillat*, 470 F.3d at 693 (quoting *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 573 (7th Cir. 1998)). “Even if [an employee's] performance was sufficiently acceptable to justify retaining her in better times, that consideration does not establish that [the employer's] reasons for terminating her in a RIF situation were pretextual.” *Merillat*, 470 F.3d at 694. In particular, a complainant's own belief that she was the better of the two secretaries and therefore should have been the one retained is “irrelevant to the question of pretext.” *Balderston v. Fairbanks Morse Engine Div. of Coltec Indus.*, 328 F.3d 309, 324 (7th Cir. 2003).

Here, Almazan's two reasons for favorably comparing herself to Meggen are explicitly irrelevant: both are unrelated to Respondent's stated reasons for deciding Almazan was the one to go. Also, Cantone specifically rejected both criteria. He said that seniority was not a factor in his decision (and, in fact, denies Almazan had greater seniority than Meggen). Cantone Interview (Jan. 22, 2016). Almazan provided no evidence to the contrary. And Cantone maintains that the needs of Spanish-speaking members are adequately met by other bilingual employees at both the Local 225 office and at Health and Welfare. *Id.* Once again, Almazan provided no evidence to the contrary.

Turning to Respondent's articulated reasons for laying off Almazan, Cantone said that he chose to lay off Almazan because he found her difficult to get along with, and thought she made him look bad, and did not follow his directions. Cantone Interview (Jan. 22, 2016). In addition, Cantone did not talk to Almazan about perceived problems because he anticipated, based on long experience, that it would be unpleasant and useless. In contrast, Cantone felt able to talk to Meggen without concern about any negative reaction and with the confidence that the problem would be addressed. *Id.*

Almazan denies all of Cantone's negative characterizations of her attitude and actions. Trying to prove Cantone's claims untrue, Almazan provided many interviews, written statements, and documents. In addition to global denials of Cantone's categorical claims (*e.g.*, that Almazan failed to follow his directions), Almazan Interview (March 23, 2016), Almazan provided detailed rebuttals of Cantone's specific examples (*e.g.*, that she moved office furniture to avoid walk-ins). Almazan Interview (Feb. 10, 2016). It is undisputed that Cantone never

small legal department for financial reasons was pretextual based on evidence that it had considered expanding the legal department six months earlier and had hired an expensive new consultant, court found it sufficient that employer had not claimed it was “financially desperate” and had provided evidence that it faced a large loss of revenue and rising fixed costs).

disciplined or wrote up Almazan for any of the work-related problems that he now describes.¹² Cantone Interview (Jan. 22, 2016). So, there is no documentation of her alleged work performance problems. Where the only evidence on a point is the parties' competing accounts, the Commission will proceed on the assumption that the complainant's version is true. *Cf. Lacaria*, 2015E002 at *12 (pure credibility disputes are generally resolved at a hearing). But it is not enough for Almazan to be correct on the facts.

Importantly, the inquiry at the pretext stage is whether the employer in good faith believed that the employee performed poorly in the manner given as the reason for discharge. *E.g., Sifuentes v. J.P. Morgan Chase & Co.*, 2013E014, *12 (CCHRC Aug. 13, 2015); *Porreca v. Anderson*, 2014E011, *30 (CCHRC July 10, 2015). It is neither necessary nor sufficient to show that the employer was objectively wrong on the facts or in its judgment. *Id.* Nor must the employer's reasons be good ones. "[E]mployers may terminate competent employees (older or otherwise) because they do not like them, or . . . because the employee does not respect the employer's authority." *Koski v. Standex Int'l Corp.*, 307 F.3d 672, 678 (7th Cir. 2002). The Commission's "only task is to determine whether [Respondent] 'honestly believed the nondiscriminatory reasons offered, even if the reasons are foolish, trivial, or even baseless.'" *Merrillat*, 470 F. 3d at 693 (citation omitted).

Here, not only has Almazan failed to show evidence that Cantone did not believe his stated reasons, she has provided the Commission with rather compelling documentary evidence confirming his statements.

One set of documents involves the heated discussion between Almazan and Cantone on August 21, 2014, when Cantone refused Almazan's request to use his business credit card to take a member out to lunch and then told her that he no longer needed her as Special Representative. Their accounts differed: Cantone found Almazan's questioning disrespectful and her manner angry and loud, while Almazan said she was upset, not angry, when Cantone reacted to her simple questions by screaming at her. *Compare* Cantone Interview (Jan. 22, 2016) *with* Almazan Interview (Nov. 3, 2015). Either way, contemporaneous text messages show how seriously Cantone viewed this confrontation. *See* Investig. Rep., Exh. F (Cantone texted Almazan, "Things got a little crazy here. It will be best if you take the rest of the day off. Tomorrow after we all cool off we can talk"). And Almazan's responsive text, while well-intentioned, in itself provides evidence of her tendency to act independently, rather than follow Cantone's directives. *See* Investig. Rep., Exh. G (Almazan's reply text: "Yes it did and I am not going to do that to you and I will return in a few so that I can answer the calls. . . ."); Email from Almazan to Staff (Nov. 15, 2015) (explaining that she decided to go back to the office for the afternoon because Meggen was out that day).

¹² Where respondent is a small employer, does not issue written warnings generally and has no formal disciplinary policy, failure to document complainant's alleged work performance problems, standing alone, does not show pretext. *Lacaria*, 2015E002 at *11 n.8; *Pryor v. Universal Footcare Products, Inc.*, 2007E035, *7, 13 (CCHRC Aug. 17, 2010). Especially in a mini-RIF, where the employer has decided someone has to go, asserting that management never previously documented or raised the now-stated concerns about his or her attitude and work style does not suggest pretext. *Majewski v. Schindler Elevator Corp.*, 2008 U.S. Dist. LEXIS 22125, *11 (N.D. Ill. Mar. 19, 2008).

The second set of documents is the March 2015 email exchange between Almazan and Zamora about various LECET-related issues. In one, Almazan acknowledged knowing that Cantone had had problems with her since assuming leadership of Local 225. *See* Investig. Rep., Exh. U-2 (Email from Almazan to Zamora) (March 25, 2015) (“Ever since Russ Schneider retired you and Tony always have a problem with my job”). This email also reveals her frustration with not understanding what she is doing wrong and why she is “still getting reprimanded.” *Id.*

Zamora’s email to Almazan is consistent with Cantone’s stated criticisms of Almazan, including that she “made him look bad” and was not a team player. *See* Investig. Rep., Exh. U-1 (Email from Zamora to Almazan) (March 16, 2015) (stating that he was “surprised and alarmed” by Almazan’s inquiries to Patrick Hosty at LECET, and that he needed to speak with her about her outside communications and ability to work as a team within Local 225). Almazan gave a detailed explanation of the LECET issues and her communications with and about LECET. Almazan Interview (Nov. 3, 2015). But for purposes of showing pretext, it does not matter if she had the better side of the argument: communicating with someone outside of Local 225’s office to ask about issues she had with Cantone is itself an example of the kind of problems Cantone cited as a reason to lay her off.

Without question, being laid off after over a decade at Local 225 and two decades at Health and Welfare – more than thirty years of service to the union – is a difficult experience. The evidence shows that Almazan was a dedicated employee and union official. Moreover, based on the texts and emails described above, it appears that Almazan was often unaware of, and unable to anticipate or understand, Cantone’s negative reactions to her actions. That an employer misconstrues well-intended actions, however, does not show pretext. *See, e.g., Koski*, 307 F.3d at 678 (in mini-RIF, where manager pointed to what he believed were disparaging comments made about him by the laid-off employee, and employee admitted there had been a conversation, but thought the manager misunderstood and overreacted to his remarks, the court stated that it did not matter who was factually correct, so long as evidence did not show that manager was lying about his belief that the employee had been disrespectful).

In sum, the evidence overwhelmingly supports Respondent’s articulated non-discriminatory reasons for laying off Almazan. Objective evidence documents the stated reasons for eliminating a secretarial position, and Cantone’s consistent testimony is backed up by contemporaneous documentary evidence of the ongoing problems he had with Almazan. There is no showing of pretext.¹³

¹³ It does not seem that Almazan herself necessarily believed that Local 225 laid her off because of her age. In early interviews with Commission staff, Almazan suggested two alternative motives.

The first involves the elephant in the room: Meggen was Cantone’s daughter. Almazan said Cantone may have laid her off because he wanted his daughter Meggen to move up in the organization. Almazan Interview (May 27, 2015) (Intake). While unfair and resented by non-beneficiaries, nepotism and related favoritism is a fact of life in most workplaces. So common that the legal principle is well-established: an employer’s preferential treatment of an employee because she is a close relative (or old friend, protégé, or love interest) is not unlawful discrimination. *See, e.g., Porreca v. Anderson*, 2014E011, *22 (CCHRC July 10, 2015); *Blackmond v. Cook County Assessors*, 2010E026, *6 (CCHRC Aug. 26, 2014). *See also Merillat*, 470 F. 3d at 694 (in mini-RIF case, where plaintiff

CONCLUSION

For the foregoing reasons, the Commission orders that Complaint No. 2015E014 pending before the Commission be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date of the order.

June 1, 2016

By delegation:



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

claimed manager chose to retain younger male colleague over her because he preferred to work with members of his social group, fact that the two had “amiable social relationship” did not show stated reasons pretextual).

Second, in one early interview, Almazan said she believed Cantone laid her off because she was so well liked by Local 225 members that Cantone was afraid she would run against him for Business Manager. Almazan Interview (July 14, 2015) (Intake). While Cantone denied this charge, Cantone Interview (Jan. 22, 2016), it is consistent with the evidence. Cantone’s testimony and his undisputed actions showed his strong aversion to Almazan’s continuing role in external affairs, her official positions, and her extensive substantive dealings with members. *See* Cantone Interview (Jan. 22, 2016) (*e.g.*, discussing August 2014 conflict, February 2015 meeting).