



Governor John Kasich

## OHIO CIVIL RIGHTS COMMISSION

### IN THE MATTER OF:

*Raven Black-Halicki*

**Complainant,**

**Complaint No. 08-EMP-AKR-32552**

v.

*International Brotherhood of Teamsters, Local 377*

**Respondent.**

OHIO  
CIVIL RIGHTS  
COMMISSION

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*Executive Director*

Commissioners  
Leonard Hubert, Chairman  
Stephanie Mercado, Esq.  
Lori Barreras  
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### ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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## **INTRODUCTION AND PROCEDURAL HISTORY**

Raven Black Halicki (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 19, 2007.

International Brotherhood of Teamsters, Local 377 (Respondent) is a labor organization as defined by Revised Code Section 4112.01 (A)(4) and maintains a place of operations in Youngstown, Mahoning County, Ohio.

The Commission investigated the charge and found probable cause that Respondent engaged in unlawful retaliation in violation of Revised Code Section 4112.02(I).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on March 13, 2008.

The Complaint alleged that Respondent's lack of referrals to Complainant are pretext for retaliation based on Complainant's filing of previous charges in violation of Revised Code 4112.02(I).

Respondent filed an Answer to the Complaint on April 17, 2008. Respondent admitted certain procedural allegations, but denied that it engaged in any unlawful retaliatory practices. Respondent also pled affirmative defenses.

A public hearing was held on October 7-8, 2009 and January 20-22, 2010 at the Ohio Attorney General's Office in Youngstown, Ohio.

The record consists of the previously described pleadings, a transcript of the hearing (935 pages), exhibits admitted into evidence during the hearing, and the post-hearing briefs filed by the Commission on January 24, 2011, by Respondent on March 31, 2011, and a reply brief filed by the Commission on April 12, 2011.

The Commission and the Respondent filed objections to the ALJ's Report and Recommendation on December 16, 2014. At the Commission's April 3, 2014 meeting the Commission adopted the Commission's objection to amend paragraph two (2) of the ALJ's report regarding the calculation of damages.

## **FINDINGS OF FACT**

The following findings of fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on June 19, 2007.

2. The Commission notified Respondent by letter dated January 10, 2008 that it was probable Respondent engaged in unlawful retaliation in violation of R.C. 4112.02(I).
3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.
4. Respondent is a local union under the International Brotherhood of Teamsters (IBT). The key role of the IBT is to organize workers, educate workers so they know their workplace rights, and negotiate and enforce contracts with employers.
5. Complainant became a member of IBT in 1996 when her employer at that time was unionized by Respondent. (Tr. 21-29, Exhibit 1)

6. The members (Teamsters) of each local IBT elect their own officers, devise their own structure, and vote on their own bylaws, compatible with the International Constitution and Bylaws.
7. The local IBTs negotiate most IBT contracts and provide most of the services to the local IBT. Local IBTs retain their own expert labor lawyers, certified public accountants, full-time business agents, organizers, and clerical staff.<sup>1</sup>
8. Complainant obtained a Commercial Driver's License (CDL) in 1995, making her eligible to drive a semi and other heavy trucks.
9. Complainant passed a physical and took a Hazmat forty (40) hour training that made her eligible to perform work involving the removal of hazardous waste or spills.

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<sup>1</sup> <http://www.teamster.org/content/fast-facts>

10. Complainant also was provided training in driving various types of vehicles by companies that employed her.

11. Complainant's work interest, driving heavy trucks, put her in the position of working for companies in the construction industry. (Tr. 21-29, Exhibit 1)

12. Most IBT contracts are white paper contracts. White paper contracts are contracts that cover workers at one employer, generally in one location.

13. The IBT also negotiates master agreements that cover employees from one company at all of the company's locations, or cover many employers under one agreement, such as in the case of construction contracts.

14. The responsibilities of the business agents in all industries are generally the same and overlap, and include negotiating collective bargaining agreements, enforcing those agreements, processing grievances of the members, monitoring employer compliance with those agreements, listening to Teamster concerns, holding meetings with Teamsters, visiting job sites, organizing and the like.<sup>2</sup>
15. Each business agent may also refer unemployed Teamsters to job opportunities of which they are aware, although such referrals are more common in the construction industry.
- Stipulations based on Respondents Responses to the Commission's First Set of Interrogatories and Request for Production of Documents.*

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<sup>2</sup> <http://www.teamster.org/content/fast-facts>

16. The business agent's contact with employers under the master agreements includes finding out what type of labor needs they have and referring Teamsters who have skill sets to meet those needs.
  
17. Employers contact the IBT before their company arrives on a job site and make arrangements to secure workers in the locale where the contract is going to be performed.
  
18. The local IBT then sends out Teamsters to work for the employer.<sup>3</sup>
  
19. Teamsters seeking work opportunities can call Respondent and let Respondent know when he/or she is available for work.

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<sup>3</sup> From the testimony of Raymond Chapin (Chapin), General Superintendent for Lake Erie Construction. Chapin testified that he might be contacting Respondent thirty to forty (30-40) times a year and that he occasionally requested a person but they typically sent out whoever they wanted to send. Tr. 404-407, Exhibits 25-26

20. If Respondent knows of a Teamster who has the skill set that an employer is looking for, the business agent may refer that Teamster to the employer.
21. Teamsters may also directly contact employers and if a Teamster has previously worked for an employer, the employer can request the Teamster through the business agent.
22. Ray DePasquale (DePasquale) has been a Teamster since 1979 and worked in construction until he was elected as Respondent's business agent, assigned to represent construction Teamsters. ( Tr. 736)
23. When DePasquale became the business agent the Respondent did not have any written rules governing referrals to construction employers. (Tr. 737)

24. From 1997 through 2004, Complainant worked for a total of ten (10) companies, working a total of 3,261 hours.<sup>4</sup>
  
25. Teamsters accrue health and welfare, and retirement benefits based on the number of hours they work. (Tr. 45)
  
26. Complainant filed a charge with the Commission on March 10, 2003, alleging retaliation, and a second charge on October 7, 2003, alleging sex discrimination and retaliation. (Comm. Exhs. 2 and 4; Tr. at 38)
  
27. After making probable cause determinations, the Commission issued Complaint Nos. 9592, 9654, and 9655.

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<sup>4</sup> The companies worked for by Complainant: The Ruhlin Co., Beaver Excavating Co., R.F. Scurlock Co, Allied Erecting, Ogelsby Construction Inc., Lake Erie Const., Hardrives Paving & Const., (1999, 2001, 2003), S. E. Johnson Cos., Inc., and The Shelly Co.

28. The parties conciliated the Complaints and the CACO was signed by Complainant, Respondent, and DePasquale during November of 2005. The Commission ratified the agreement on January 12, 2006. (Comm. Exh. 5)
29. Complainant's husband died in 2005. After his death, Complainant did not make herself available for work until April 2006.
30. On April 21, 2006 Complainant contacted DePasquale and said that she was ready to go to work.
31. DePasquale returned Complainant's call on April 25<sup>th</sup> and referred Complainant to Allega, R.W. Sidley and City Concrete and told her to call them because he thought they were hiring.
32. Complainant called DePasquale on May 1, 2006 saying she was available for work.

33. DePasquale returned Complainant's call and told her that he hoped that she had gotten work with one of the companies he referred her to on April 25<sup>th</sup>.
  
34. On the same day Complainant called the International Review Board, the women's co-coordinator for the IBT, and Jim Woodward (Woodward) at the IBT, Construction Division to complain about DePasquale not giving her referrals for work.
  
35. Woodward asked Complainant what type of work she had done and Complainant described it as "heavy highway" but not "ready mix". (Tr. 127-132 )
  
36. On May 8, 2006 Complainant told DePasquale that she had called Woodward, telling DePasquale that Complainant had a right to be referred to work by DePasquale, just like any other member. (Tr. 127-132)

37. DePasquale told Complainant that the employers that he had previously referred her to for work, Allega, Sidley, and City Concrete, were hiring every day, specifically members who have experience driving ready mix concrete trucks.
38. After the May 8<sup>th</sup> telephone conversation with DePasquale, Complainant received two (2) referrals in May. Complainant worked for A&A Safety Company from June 2<sup>nd</sup> to 6<sup>th</sup> and Lake Erie Construction on June 8<sup>th</sup>.
39. Complainant complained to Bob Bernat (Bernat) a local official for Respondent. (Tr. 156)
40. By the end of June Complainant had received a one day referral to Boca Construction on June 26<sup>th</sup> and another single day of work with Lake Erie Construction on June 29<sup>th</sup>.

41. Woodward instructed Complainant to file a formal charge with Respondent complaining about DePasquale which she did on July 5, 2006. (Resp. Exhibit C)
  
42. Complainant was again referred to work on July 7<sup>th</sup> and worked for Lake Erie Construction for four (4) days in August, followed by another referral to Great Lakes Construction where Complainant worked for a week in August 2006.
  
43. Complainant was laid off from Great Lakes Construction and believed that she should have been retained based on her seniority. (Tr. 255-256)
  
44. Complainant contacted DePasquale to complain about the lay-off and he told her she had been fired by Great Lakes Construction.

45. DePasquale informed Complainant of a letter he had received from Great Lakes wherein her firing was based on damaged equipment, failure to perform her work duties, an act of insubordination, a warning about use of her cell phone and personal portable radio. The letter informed him that she was placed on Great Lakes "do not hire" list. (Resp. Exhibit D).
46. When Complainant was working for Great Lakes no one employed by Great Lakes Construction informed Complainant that she was terminated or that she was being terminated for the reasons stated in the letter.
47. Complainant did not receive a letter from Great Lakes Construction nor did DePasquale notify nor forward to Complainant the letter stating that Complainant had been fired.

48. After Complainant learned from DePasquale that she had been fired from Great Lakes Complainant attempted to call Great Lakes to talk to someone in management and obtain a copy of the letter from September 7, 2006 until September 13, 2006. Complainant was never able to speak to a manager at Great Lakes about the letter.

49. Complainant did not see the Great Lakes letter until the EEOC mediation on September 19, 2006.

50. The Great Lakes letter is dated September 7, 2006.

51. Teamsters have a time limit of fourteen (14) days within which to file a grievance. (Comm. Exh. 27, Article VIII at p. 12)

52. DePasquale's next referral to Complainant was to Shelly and Sands at their plant in Brilliant, Ohio which Complainant refused because she thought it was too far away and she had already accepted short term work with United Parcel Service (UPS), which she had found on her own. The UPS job ended on December 22, 2006.

53. Complainant filed a charge with the Commission alleging unlawful retaliation against the Respondent for conduct during the construction season of 2006. (Tr. 47-49, Comm. Exhibit 7.)

54. In April 2007 Complainant contacted DePasquale to inform him that she was available for work. (Tr. 167)

55. DePasquale's first referral was to a Beaver Excavating Company construction site outside of the jurisdiction of Respondent. Complainant told DePasquale she would call him back after checking the location on the internet. (Tr. 169-170)
56. Complainant called Dave Sowers (Sowers) the Akron local IBT construction business agent to ask him if Beaver Excavating was where Depasquale told Complainant it was located. (Tr. 172)
57. Sowers informed Complainant that there was a job at that location but it was with Ruhlin. ( Tr. 174)
58. Complainant called DePasquale back about the job in Akron but he told Complainant that they were no longer hiring, the positions had already been filled. (Tr. 186-188)

59. Complainant called DePasquale in May of 2007 leaving a message that she was still waiting to be referred to work.
60. DePasquale called Complainant back and told her that there was no work. He further stated that the Respondent did not operate a hiring hall and she could look for her own work. DePasquale told Complainant that she should have taken advantage of referrals that he had given her in the past.
61. DePasquale ran for and was elected to the position of construction business agent from 1999 up through the term ending in March 2007. ( Tr. 339)
62. In the fall of 2007 DePasquale ran for the position of secretary/treasurer, which in the case of Respondent, is the equivalent of president. (Tr. 339. 349)

63. He also ran to retain his role as business construction agent. (Tr. 350)

64. Although DePasquale was successfully elected, the IBT suspended DePasquale from the union, threw out the results of the election, and imposed a trusteeship on February 18, 2008.

## **Jurisdiction**

1. The Respondent asserts that the conduct complained of by Complainant is an unfair labor practice under Section 8 of the National Labor Relations Act. As a consequence, the Respondent asserts that Section 7 of the Act preempts the state from exercising jurisdiction over the Complainant's claim of retaliation citing *Ohio State Bldg. & Construction Trades Council v. Cuyahoga Cty. Bd. Of Commrs.*, 98 Ohio St. 3d 214 (2002).
  
2. The Respondent's reliance on *Ohio State Bldg. & Trades Council* is misplaced.
  
3. The case at bar involves state law claims arising under R.C. 4112.02 (I). The Complainant's charge of discrimination is based on her not receiving referrals for construction jobs. The Respondent's practices for referrals are not covered by the CBA.

4. Where a state law claim is not subject to interpretation under the Respondent's CBA, the state law claim is not preempted by the National Labor Relations Act. *Lingle v. Norge Division of Magic Chef, Inc.* (1988), 486 U.S. 399, 411.

Pre-emption is recognized in two circumstances: (1) when interpretation of a state law claim is inextricably intertwined with the consideration of the terms of a labor contract; and (2) when application of state law to the dispute requires interpretation of a collective bargaining agreement.

*Thomas v. LTV Corp.* (5<sup>th</sup> Cir. 1994) 39 F. 3d 611, 616-617 (citing *Lingle, supra*)

5. Neither of the two circumstances set forth in *Thomas* apply in the instant case.

## **CONCLUSIONS OF LAW AND DISCUSSION**

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.<sup>5</sup>

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<sup>5</sup> Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

1. The Complaint alleged that Respondent's lack of referrals to Complainant are pretext for retaliation based on Complainant's filing of previous charges in violation of Revised Code 4112.02(I).

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(I) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. To establish a case of retaliation, the Commission must prove that:

- (1) Complainant engaged in a protected activity,
- (2) Respondent was aware that the Complainant had engaged in that activity,
- (3) Respondent took an adverse employment action against the Complainant, and
- (4) There is a causal connection between the protected activity and adverse action.

*Greer-Burger v. Temesi*, 116, 116 Ohio St.3d 324 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 F.2d 1064, 1066<sup>6</sup>

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<sup>6</sup> The Ohio Supreme Court holds that federal case law interpreting and applying Title VII is generally applicable to R.C. 4112.02 claims unless the statutory terms are distinguishable. *Genaro v. Cent. Transport, Inc.* (1999), 84 Ohio St. 3d. Accordingly, the Court's recent decision in *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. \_\_\_ (2013) is inapplicable to alleged violations of R.C. 4112.02(I).

The Court's rationale is premised on the amendments to the Civil Rights Act of 1991(1991 Act), 105 Stat. 1071 which overruled, in part, *Price Waterhouse v. Hopkins*, 490 U.S. 228 at 259 (1989). The amendments changed the causation standard for status-based discrimination but did not change the causation language of the anti-retaliation provision. The Court reasoned that since the legislature only amended Title VII's status provision, there was no intent to eliminate the "but for causation" standard for the retaliation provision. Ohio law has not undergone similar changes. The language of section 2000e-2(m) is substantially different from R.C. 4112.02 (A). The causation standard announced in *Nassar* is narrow based not only on a strict construction of the statutory language but also on the following policy analysis:

"[L]essening the causation standard could also contribute to the filing of frivolous claims, which would siphon resources from efforts by employer[s], administrative agencies, and courts to combat workplace harassment." *Id.* Slip. Op. at 18.

R.C. 4112.08 mandates that "this chapter [4112] shall be construed liberally for the accomplishment of its purposes which is to eliminate discrimination in the state of Ohio. *Genaro v. Cent. Transp.*, 84 Ohio St. 3d 293 *Helmick v. Cincinnati Word Processing, Inc.* (1989), 45 Ohio St. 3d 131, 133, 543 N.E.2d 1212, 1215, *Kerans v. Porter Paint Co.* (1991), 61 Ohio St. 3d 486, 575 N.E.2d 428, *Collins v. Rizkana* (1995), 73 Ohio St. 3d 65, 652 N.E.2d 653

5. If the Commission establishes a prima facie case, the burden then shifts to the employer to “articulate some legitimate, nondiscriminatory reason “for its actions. *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 802, 93S.Ct. 1817, 36 L.Ed.2d 668.

6. If the employer satisfies this burden, the burden shifts back to the Commission to demonstrate “that the proffered reason was not the true reason for the employment decision.” *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248, 256, 101 S.Ct. 1089, 67 L.Ed.2d 207. 293, 295-298, 703 N.E.2d 782, 784-786

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To apply the *Nassar* analysis to R.C. 4112.02 (I) would result in an interpretation inconsistent with the legislative history of the law. It is a cardinal rule of statutory construction that a statute should not be interpreted to yield a absurd result. *Mishr v. Bd. of Zoning Appeals* (1996), 76 Ohio St.3d 238, 240, 1996 Ohio 400, 667 N.E.2d 365

7. The retaliation provision under R.C. 4112.02(I) contains an opposition clause and a participation clause. Since courts have analyzed these clauses differently, it is important to focus on the nature of the alleged protected activity.

The distinction between employee activities protected by the participation clause and those protected by the opposition clause is important because federal courts have generally granted less protection for opposition than participation.

*Aldridge v. Tougaloo College*, 64 FEP Cases 708, 711 (S.D. Miss. 1994), citing *Brown v. Williamson Tobacco Co.*, 50 FEP Cases 365 (6<sup>th</sup> Cir. 1989).

8. Courts usually grant absolute protection for participation activities such as filing a discrimination charge, testifying in civil rights proceedings, or otherwise participating in such proceedings.

*Proulx v. CitiBank*, 44 FEP Cases 371 (S.D. N.Y. 1987).

9. A causal connection may be established with evidence that the adverse employment action closely followed the protected activity. *Holland v. Jefferson National Life Ins. Co.*, 50 FEP Cases 1215 (7<sup>th</sup> Cir. 1989).

... a court may look to the temporal proximity of the adverse action to the protected activity to determine where there is a causal connection.

*EEOC v. Avery Dennison Corp.*, 72 FEP Cases 1602, 1609 (6<sup>th</sup> Cir. 1997) (citation and quote within a quote omitted).

...Temporal relationship between a plaintiff's participation in protected activities and a defendant's alleged retaliatory conduct is an important factor in establishing a causal connection.

*Gonzales v. State of Ohio, Dept. of Taxation*, 78 FEP Cases 1561, 1564 (S.D. Ohio 1998).

10. The Complainant filed a charge with the Commission on March 10, 2003, alleging retaliation, and a second charge on October 7, 2003, alleging sex discrimination and retaliation. (Tr. at 38, Exhs. 2 and 4)

11. The March 10, 2003 charge alleged that Respondent had retaliated against her starting in 2000. (Tr. 38, Exh. 2)

12. In the March 10, 2003 charge Complainant alleged that she believed that she was being retaliated by being denied job referrals because she filed an internal sexual harassment complaint.

13. DePasquale was the business agent at that time who Complainant complained to about the alleged harasser spreading false rumors. Complainant alleged that DePasquale did not investigate her complaint.

14. In November of 2005 DePasquale was one of the signatories on the Commission's conciliation agreement and he was aware that Complainant engaged in protected activity.

15. The first time after the conciliation agreement that Complainant sought a referral from Respondent was in April 2006.

16. From 2006 to 2008 Complainant received less work hours compared to other members of Respondent. (Exhibits 1, 3 and 14)

17. The Commission having established a *prima facie* case, the burden of production shifted to Respondent to “articulate some legitimate, nondiscriminatory reason” for the employment action. *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondent must:

... “clearly set forth, through the introduction of admissible evidence,” reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the employment action.

*St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 507, 62 FEP Cases 96, 103 (1993), *quoting Burdine, supra* at 254-55, 25 FEP Cases at 116, n.8.

18. The presumption of unlawful retaliation created by the establishment of a *prima facie* case “drops out of the picture” when the employer articulates a legitimate, nondiscriminatory reason for the employment action. *Hicks, supra* at 511, 62 FEP Cases at 100.

19. Respondent met its burden of production with the introduction of evidence that Respondent is not a hiring hall, but a referral hall, that seniority did not factor into job referrals, and Complainant’s lack of diligence in applying for available work was the cause of her lack of work.

20. Respondent having met its burden of production, the Commission must prove that Respondent retaliated against Complainant because she engaged in protected activity. *Hicks, supra* at 511, 62 FEP Cases at 100.

21. The Commission must show by a preponderance of the evidence that Respondent's articulated reasons for Complainant's minimal work history starting in 2006 were not its true reasons, but were a "pretext for ... [unlawful retaliation]." *Id.*, at 515, 62 FEP Cases at 102, quoting *Burdine*, 450 U.S. at 253, 25 FEP Cases at 115.

[A] reason cannot be proved to be a "pretext for ... [unlawful retaliation]" unless it is shown *both* that the reason was false, *and* that ... [unlawful retaliation] was the real reason.

*Hicks, supra* at 515, 62 FEP Cases at 102.

22. Thus, even if the Commission proves that Respondent's articulated reasons are false or incomplete, the Commission does not automatically succeed in meeting its burden of persuasion:

That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the ... [Commission's] proffered reason of ... [unlawful retaliation] is correct. That remains for the factfinder to answer ...[.]  
*Id.*, at 524, 62 FEP Cases at 106.

23. Ultimately, the Commission must provide sufficient evidence for the factfinder to infer that Complainant was, more likely than not, a victim of unlawful retaliation.

24. In order to show pretext, the Commission may directly or indirectly challenge the credibility of Respondent's articulated reasons for Complainant's termination.

25. The Commission may directly challenge the credibility of Respondent's articulated reasons by showing that the reasons had no basis *in fact* or they were *insufficient* to motivate the employment decision. *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078, 1084 (6<sup>th</sup> Cir. 1994).

26. Such direct attacks, if successful, permit the fact-finder to infer intentional discrimination from the rejection of the reasons without additional evidence of unlawful discrimination.

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may together with the elements of the *prima facie* case, suffice to show intentional discrimination ... [n]o additional proof is required.<sup>7</sup>

*Hicks, supra* at 511, 62 FEP Cases at 100 (emphasis added).

27. DePasquale's testimony was devoid of credibility.

28. Complainant wisely recorded her conversations with DePasquale when she attempted to get referrals in April 2006. Complainant had alleged that DePasquale had been complicit in Respondent's alleged retaliation in her charge of March 10, 2003.

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<sup>7</sup> Even though rejection of a respondent's articulated reason is "enough at law to *sustain* finding of discrimination, *there must be a finding of discrimination.*" *Hicks, supra* 2749, 62 FEP Cases at 100, n.4.

29. During a May 8, 2006 telephone conversation that Complainant had with DePasquale Complainant questioned Depasquale about how she got work through Respondent in 2004. At the end of the conversation Depasquale questioned why Complainant called Woodward and threatened to file harassment charges against Complainant:

Raven: How did I go to work in 2004?

Ray: I have no idea, I have no idea!

Raven: Oh, you didn't call me and tell me to go up to Route 90?

Ray: What about it.

Raven: You referred me out to work.

Ray: Well I'm telling you how we do it now. I tell you the company. You go get it. This isn't a hiring vault. If the company calls me and says hey they want that Raven-what's your last name again? Raven, whatever your last name is, if they want Raven out on the job alls they have to do is request and I sent you out. I'm not going to refer you to anybody. If they call me and say I want Raven, I'd be glad to tell them absolutely, call her. I'm telling you I know Allega, Sidley and City Concrete are hiring, they're hiring every day. I know that for a fact. So if you have a problem with going there and doing what I just asked you to do, and you can't drive a mixer, I think that's what they're hiring for.

Raven: No I can't.

Ray: You can't drive a mixer?

Raven: No.

Ray: Well----

Raven: I don't have any type of experience with that.

Ray: Well, I'm telling you what they're hiring—what I know that they're hiring for. That's what they're doing. And that's what they're hiring for. So why, no lets get back to Woodward, why would you have called him anyway?

Raven: You refused to send me out to work.

Ray. I refused to send you out to work. What makes you think there's work?

Raven: I don't know.

Ray: Okay. Well I think me and you are going to turn this because I think you're harassing me now and I'm going to file charges on you. How does that grab you? (...)

(Tr. 135-138)

30. DePasquale's referral to Allega, Sidley, and City Concrete were for jobs that he knew she was not qualified for.

31. Pension reports for other members of Respondent show for the years 2006, 2007 and 2008 that three members with greater seniority than Complainant and ten with less seniority, did not experience a significant drop off in work until after DePasquale had been suspended from Respondent in 2008.  
(Exhibit 14)

32. The trusteeship imposed on Respondent after DePasquale had been suspended instituted a system of referral for seniority for construction teamsters where members who had the most seniority were called first.  
(Tr. 375-382)

33. DePasquale admitted that he referred members for work:

Judge Johnson: Yeah, referring, referring. I mean its okay because I just want to be clear about that term referral because it's been used a lot. I understand that the Union Hall 377 is not a hiring hall, got that. So, what I'm trying to understand is what the term referral means, you know from the person who actually has the responsibility or the opportunities to identify work that's available out there. And from what you've told me, don't let me put words in your mouth, what you told me that's your job is to know generate work for the Union members, is that correct? That's your job?

DePasquale: Yeah that's my job to create jobs.

Judge Johnson: So once you identify and you say create, but those jobs are created by the employers out there, the construction companies that have that right and so you find out about them.

DePasquale: Find out about the jobs.

Judge Johnson: Yes, you identify those jobs or you negotiate and you find out if there's work going on and then you go out to an employer and you negotiate an agreement-is that a part of what you do also?

DePasquale: I try, that's my ultimate goal.

Judge Johnson: Alright, so yeah, I'm-it's sort of all coming together; the part that just remains elusive is that referral system. I think, from what I've heard. You don't refer or you do refer?

DePasquale: I put people to work.

Judge Johnson: You don't refer or you do refer?

DePasquale: I do refer.

34. During the time that Complainant was seeking referrals from Respondent, DePasquale referred non-members to work for employers that were covered by Teamster contracts, including his daughter.

35. I also do not believe that Complainant was terminated from Great Lakes for damaging equipment, failing to perform her work duties, insubordination, or using cell phone and personal portable radio.

36. When DePasquale was asked why he did not inform Complainant about her right to file a grievance under the CBA he responded as follows:

(...)

DePasquale: She should have known that. It isn't something that-I mean-she knows how to get to you the Civil Rights, she knows how to get to the EEOC, she knows every avenue in the world, why don't she know what the bargaining agreement says? She knows everything else. Why do I have to tell her something that she claims that she's been doing all of her life, what the terms of the of the contract say.

Tobocman: Do you as her business agent have any responsibilities toward her continued employment?

DePasquale: Zero.

(Tr. 825)

37. Complainant received a Safety Certificate from Great lakes Construction that was dated 9/1/06-9/30/06, (Tr. 912-13, Exhibit 37).

38. The credible evidence supports a determination that DePasquale treated members of Respondent who had not opposed discriminatory practices better than Complainant in the referral of jobs.

39. After a careful review of the entire record, the ALJ disbelieves the underlying reasons that Respondent articulated for Complainant's lack of work during the years 2006-2008 and concludes that they are a pretext for unlawful retaliation.

40. The conduct of the Respondent constitutes unlawful retaliation. Therefore, Complainant is entitled to relief as a matter of law.

## RECOMMENDATIONS

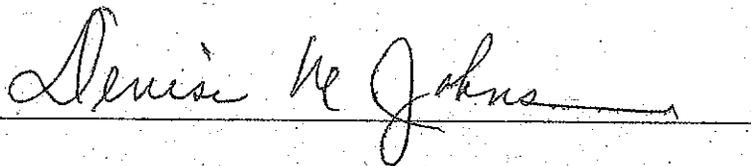
For all of the foregoing reasons, it is recommended in Complaint No. 32552 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
2. The Commission order Respondent to pay back pay, including health welfare and retirement benefits that Complainant would have received had she been given referrals comparable to members of Respondent who were hired into positions driving heavy trucks from April 21, 2006 through 2008 plus interest at the maximum rate allowed by law in the amount of \$63,540.68;<sup>8</sup> Respondent shall submit to the Commission by January 1, 2014, a certified check payable to Complainant for \$63, 540.68.

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<sup>8</sup> Any ambiguity in the amount that Complainant would have earned during this period or benefits that he would have received should be resolved against Respondent. Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent.

3. Within six months of the date of the Commission's Final Order the Respondent's management staff takes training in Ohio's laws against discrimination, with a focus on retaliation.<sup>9</sup>



**DENISE M. JOHNSON**  
**CHIEF ADMINISTRATIVE LAW JUDGE**

Date: May 13, 2014

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<sup>9</sup> The Commission offers training at no cost to the Respondent or the Respondent can utilize its own resources in complying with the training requirement of this recommendation.



# Ohio Civil Rights Commission

Governor  
John Kasich

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**Board of Commissioners**

Leonard J. Hubert, Chairman  
Lori Barreras  
William Patmon, III  
Stephanie M. Mercado  
Tom Roberts

G. Michael Payton, Executive Director

May 30, 2014

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State Office Building, 11<sup>th</sup> Floor  
615 West Superior Avenue  
Cleveland, Ohio 44113-1899

RE: Raven Black –Halicki v. International Brotherhood of Teamsters, Local 377  
AKR73(32552)06192007  
22A-2007-05312-C  
Complaint No. 08-EMP-AKR-32552

Enclosed is a certified copy of the Commission Order issued in the above captioned matter. This Order requires Respondent to **Cease & Desist** from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code. Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

*Desmon Martin/pju*

Director of Enforcement & Compliance  
Ohio Civil Rights Commission

DM/pjw  
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge  
Lori A. Anthony, Esq., Chief – Civil Rights Section

Certified No. 7005 1160 0004 7287 2978  
Certified No. 7005 1160 0004 7287 2985  
Certified No. 7005 1160 0004 7287 2992

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John Kasich, Governor

RAVEN BLACK-HALICKI )

Complainant, )

and )

INTERNATIONAL BROTHERHOOD )  
OF TEAMSTERS LOCAL 377 )

Respondent. )

COMPLAINT NO. 08-EMP-AKR-32552

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**CEASE AND DESIST ORDER**

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This matter came before the Commission upon Complaint and Notice of Hearing No. 08-EMP-AKR-32552; the official record of the public hearing held on October 7 and 8, 2009, and January 20, 21 and 22, 2010, before Chief Administrative Law Judge Denise M. Johnson, a duly appointed administrative law judge; the post-hearing briefs and the reply brief filed by the Commission and Respondent; the Chief Administrative Law Judge's Report and Recommendation dated October 25, 2013; the Objections filed by the Parties to that Report; and the Administrative Law Judge's Amended Report and Recommendation dated May 13, 2014.

The complaint alleges Respondents, the International Brotherhood of Teamsters Local

377 and Ray DePasquale subjected Complainant to harassment and retaliation for having filed previous charges with the Commission and the Equal Employment Opportunity Commission in violation of R.C. 4112.02(I). After a public hearing and a hearing on the objections filed by the Parties, the Chief Administrative Law Judge recommended that the Commission order Respondents to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112 and amended the recommendations regarding the calculation of damages.

After careful consideration of the entire record, the Commission adopts the Chief Administrative Law Judge's Amended Report and Recommendation as to the findings of fact, conclusions of law, and recommendations as follows:

1. Respondents are ordered to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
2. Respondents are ordered to pay back pay, including health welfare and retirement benefits that Complainant would have received had she been given referrals comparable to those of other members of Respondent International Brotherhood of Teamsters Local 377 who were hired into positions driving heavy trucks from April 21, 2006 through 2008 plus interest at the maximum rate allowed by law, in the amount of \$63,540.68. Respondent shall submit to the Commission within sixty (60) days of the date of the Commission's Final Order, a certified check payable to Complainant for \$63,540.68.
3. Respondent International Brotherhood of Teamsters Local 377 is ordered, within six months of the date of the Commission's Final Order, that its management staff take training in Ohio's laws against discrimination with a focus on retaliation.

This ORDER issued by the Ohio Civil Rights Commission this 15<sup>th</sup> day of May, 2014.

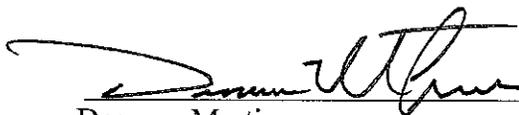
  
\_\_\_\_\_  
Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Final Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



Desmon Martin  
Director of Enforcement and Compliance  
Ohio Civil Rights Commission

Date: \_\_\_\_\_

5/30/2014