

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her capacity as)	
EXECUTIVE INSPECTOR GENERAL for)	
AGENCIES OF THE GOVERNOR, State)	
Of Illinois,)	
Petitioner,)	
)	
v.)	No. 17-EEC-004
)	
AMPARO GARZA-LANG,)	
Respondent.)	

DECISION

This cause is before the Executive Ethics Commission (“Commission”) following an evidentiary hearing on September 17, 2018.

Petitioner filed the present two-count complaint with the Commission on December 29, 2016 and the Commission deemed it sufficient to proceed on March 27, 2017. On May 17, 2018, the Commission granted Respondent’s motion for summary judgement with respect to Count I (Retaliation) but denied Respondent’s motion with respect to Count II (Obstruction or Interference). The parties were unable to settle this count, so the assigned administrative law judge conducted an evidentiary hearing.

The parties submitted a joint Statement of Stipulated Facts in advance of the evidentiary hearing. Following the hearing, the parties filed post-hearing briefs on October 31, 2018 and reply briefs on November 16, 2018.

Petitioner is represented by Assistant Attorney General Neil MacDonald and Respondent is represented by Carl Draper.

FINDINGS OF FACT

A copy of the record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Amparo Garza-Lang was at all times relevant to this matter employed by the Illinois Department of Agriculture (AGR) as the Trade Director for Latin America and

the Caribbean. Respondent conducted AGR business in a field office located in Mexico City, Mexico.

2. The AGR-Mexico City office shared space and one employee with the Illinois Department of Commerce and Economic Opportunity.
3. At all times relevant to this matter, Maria “Malena” Moedano (Moedano) was employed part time pursuant to annually-renewed contracts by AGR as an office helper or administrator in the same Mexico City office. She was first hired by AGR in 2000 and her employment ended on June 30, 2015 when her contract expired and was not renewed for the following fiscal year. Her normal working hours were Monday through Friday, from 1:00 pm to 5:00 pm.
4. In response to a complaint it received on November 25, 2015, the Office of the Executive Inspector General for Agencies of the Governor (OEIG) initiated an investigation into circumstances surrounding the decision not to renew Moedano’s contract. As part of this investigation, OEIG staff interviewed Respondent on October 7, 2016. The interview was neither transcribed nor recorded.
5. Petitioner alleges that during Respondent’s October 7, 2016 OEIG interview, Respondent “intentionally made a number of false and materially misleading statements and omissions that were intended to and did interfere with and obstruct OEIG’s investigation of the circumstances surrounding Moedano’s departure from State employment.” Complaint par. 40. Respondent’s specific and allegedly false and misleading statements are listed in the complaint at subparagraphs 40 “a” through “i.” *Id.*
6. The Complaint alleges that Respondent interfered with and obstructed the OEIG’s investigation by making a number of false or misleading statements during the course of her October 7, 2016 interview. The OEIG investigators interviewed Respondent for nearly three hours on October 7, 2016. At the interview, Respondent exercised her right not to have the interview recorded. The resulting OEIG report of the interview consists of seven single-spaced, typed pages that summarize the interview.
7. During the October 7, 2016 interview, Respondent was presented with a copy of a March 26, 2015 email purportedly from Respondent to AGR officials in Illinois.
8. The text of the March 26, 2015 email presented to Respondent at her interview reads:

I have a feeling that the Director is going to receive a letter from [DCEO official] supported by Malena about what they perceive we do wrong in this office. I think they could be communicating with each other now that [DCEO official] is in Chicago. I do not have any idea what they are planning to do but, since [DCEO official] is leaving DCEO, I do not think is anything good. I know I cannot stop them so I thought I tell you in the event you hear about it from the Director.

PLEASE do not answer this email, since I am erasing it as soon as it leaves my desk.

The email finishes with Respondent's signature block.

9. In response to questions concerning the March 26, 2015 email, Respondent stated that she did not recall this email and that she did not recall sending the same email. Respondent also questioned how the OEIG obtained a copy of the email. When asked again if she sent the email, Respondent stated that the Mexico City office has only one computer, that the computer has access to only one email account, and that the computer is not password protected. She also stated that she is away from the Mexico City office a lot due to traveling.

CONCLUSIONS OF LAW

1. Respondent Amparo Garza-Lang was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Ethics Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over Respondent in the matter of her alleged interference with and obstruction of the OEIG's investigation. 5 ILCS 430/20-5(d).
3. Respondent had a duty not to obstruct or interfere intentionally with an investigation conducted under the Ethics Act by an inspector General. 5 ILCS 430/5-50(e).
4. A State employee who intentionally omits, denies or misrepresents facts that he knows to be true at the time of his denials or misrepresentations, or who knowingly and intentionally makes false, misleading or evasive statements during the course of an official OEIG interview, is subject to the penalties that Section 20-70, 50-5(e) and 50-10(a) of the Ethics Act authorize. *Meza v. Brown*, 14-EC-003 (Jan. 23, 2014).
5. In all proceedings before the Commission, the standard of proof is by a preponderance of the evidence. 5 ILCS 430/20-50(k).
6. Petitioner has demonstrated by a preponderance of evidence that Respondent Amparo Garza-Lang violated Section 50-5(e) of the Ethics Act on October 7, 2016 when she intentionally obstructed or interfered with an investigation conducted under the Ethics Act by an inspector general when, during her interview, she stated that she did not recall the March 26, 2015 email, stated that she did not recall sending the same email, and questioned how the OEIG obtained a copy of the email.
7. Petitioner has demonstrated by a preponderance of evidence that Respondent Amparo Garza-Lang violated Section 50-5(e) of the Ethics Act on October 7, 2016 when she intentionally obstructed or interfered with an investigation conducted under the Ethics

Act by an inspector general when, during her interview, she implied that the March 26, 2015 email could be explained by having a single computer in the office without password protection and her absence due to long periods of travel.

8. The Executive Ethics Commission may levy an administrative fine of up to \$5,000.00 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

ANALYSIS

The evidence demonstrates that employees of AGR and DCEO were engaged in a power struggle with respect to the Mexico City offices in 2015. The two State agencies shared office space and a staff member in Mexico City. Respondent was particularly concerned that DCEO wanted power of attorney for both DCEO-Mexico and AGR-Mexico, and that DCEO-Mexico would send a “bad report” back to Illinois officials in order to wrest control of the power of attorney from AGR-Mexico.

Against this backdrop, Respondent Garza-Lang had a complicated relationship with her friend and long-time employee, Moedano. Respondent and Moedano ate lunch together nearly every workday for 14 years. Respondent respected Moedano’s competence as a translator, but was concerned about elements of her office behavior, including selling jewelry and household items, doing personal translation work, and generally failing to work as a team player.

Respondent eventually also became suspicious of Moedano’s interactions with a DCEO-Mexico official. Respondent perceived that Moedano would inappropriately share AGR business with DCEO staff and expressed a concern in a March 26, 2015 email that Moedano would support the DCEO-Mexico official’s expected “bad report” to State of Illinois officials. On May 6, 2015, Respondent informed AGR officials that she had asked an accountant to prepare a severance package for Moedano.

On May 11, 2015, Respondent sent AGR officials that she intended to prepare a “corrective” for Moedano and intended to present it to her in July. She noted again that she had asked the accountant to prepare a severance package in case Moedano resigned after receiving the corrective. Respondent also suggested that that AGR not sign Moedano’s contract, but rather “leave it on ‘stand by.’” On May 18, 2015, Respondent translated a letter she found next to a computer used by Moedano and forwarded the letter to AGR staff in Illinois. The letter accuses Respondent of financial mismanagement and improprieties. There is no evidence presented that Moedano sent this letter to anyone.

AGR officials recommended that Respondent not prepare a corrective for Moedano, but instead, conduct employee evaluations for all AGR-Mexico City staff. On June 12, 2015, Respondent present Moedano with an evaluation. The evaluation rated Moedano’s work performance as “acceptable” and criticized her for performing personal business on State-compensated time.

On June 18, 2015, Moedano sent an email to AGR Director Philip Nelson. The email contained a letter dated June 17, 2015 in which she complained about Respondent and the working conditions in the Mexico City office. In the letter, she states that if AGR or Respondent no longer require her services, “I request the severance payment that I am entitled to according to the Mexican labor laws.” On June 30, 2015, the AGR General Counsel sent Moedano an email stating: “The Illinois Department of Agriculture (“Department”) hereby accepts your resignation.” The email further offers to settle any claims Moedano may have against AGR for \$5,152.65. *Id.* This is the severance amount calculated by the Mexican accountant. Pet. Ex. 15(b). Moedano’s contract was not renewed for Fiscal Year 2016 and her last day of work was June 30, 2015.

Examples of Respondent’s alleged obstruction of, or interference with, an OEIG investigation can be categorized into two broader issues. The first category of issues relates to Respondent’s statements during her OEIG interview about her involvement in the decision not to renew Moedano’s contract. The second category of issues relates to Respondent’s statements during her OEIG interview about various concerns she had with Moedano and whether Respondent communicated these concerns to anyone at AGR.

Respondent’s involvement in Moedano’s contract non-renewal

Respondent stands accused of falsely denying involvement in the decision not to renew Moedano’s contract for FY 16, other than conducting Moedano’s June 12, 2015 evaluation. No clear evidence was presented that Respondent participated in that decision. On the contrary, there was ample evidence to suggest that, while Respondent had communicated Moedano’s perceived shortcomings to AGR staff, Respondent nevertheless expected up until June 30, 2015 that Moedano’s contract would be renewed. Respondent acted accordingly by preparing corrective measures that she intended to implement during Moedano’s next contract period. Pet. Ex. 12. AGR officials, however, told Respondent not to issue these corrective measures for Moedano, but rather to conduct evaluations for all AGR-Mexico City staff. Tr. Vol. II, p. 45.

Respondent’s overall evaluation of Moedano, presented to her on June 12, 2015, also supports Respondent’s assertion that she was not involved in the decision not to renew Moedano’s contract. Respondent deemed Moedano’s work to be “acceptable” and identified objectives for Moedano to complete in the following fiscal year. Pet. Ex. 17-12. In Part IV of Moedano’s evaluation, Respondent wrote that she had talked to an AGR official and “she recommended to give Malena a year for her to leave her personal work behind and to give the 4 hours of her work to [AGR].” *Id.* While this may not be a glowing evaluation for Moedano, the comments clearly indicate that Respondent intended to help her improve during the next contract period.

Respondent did suggest in an email dated May 11, 2015 that AGR not sign Moedano’s FY 2016 contract, but rather “leave it on ‘stand by’” while she prepared corrective measures for Moedano. Pet. Ex. 12. By making this reasonable suggestion, Respondent did not become involved in the ultimate decision not to renew Moedano’s contract. If Moedano were to have resigned after receiving the corrective, the issue of her contract renewal would become moot. In

that same email, Respondent indicated that she would probably present the corrective to Moedano in July, which would be after the new contract period had begun. *Id.*

Also, although Respondent did ask an accountant to calculate a severance package for Moedano, the OEIG investigator's testimony at the hearing clarified that a severance payment would be due to Moedano whether her termination was voluntary or involuntary. Tr. Vol. I, p.91. Furthermore, Respondent's claim that she was directed by AGR Legal Counsel to inquire about such a payment was not contradicted at hearing. Regardless of who initiated the calculation of a severance package, it appears to have been a prudent exercise. Moedano's June 18, 2015 letter to AGR Director Nelson (Pet. Ex. 16) was interpreted by AGR Legal Counsel on June 30, 2015 to constitute a letter of resignation. (Resp. Ex. 17-16). Nothing in the record suggests that Respondent was aware of Moedano's June 18, 2015 letter or that AGR's Legal Counsel would interpret it to constitute a letter of resignation.

In conclusion, the record is replete with evidence that until June 30, 2015 Respondent expected Moedano's contract to be renewed for FY 2016. Events that appear contradictory can be reasonably explained away. Respondent certainly complained about Moedano's conduct, but Respondent's solution was not to terminate or fail to renew Moedano's contract. Therefore, Respondent's interview statements that she was not involved in the decision not to renew Moedano's contract and was not aware of this decision do not constitute interference or obstruction of an OEIG investigation.

Respondent's concerns and communication

A second line of Respondent's alleged obstruction focuses on interview statements she made about concerns she had with Moedano and whether Respondent communicated these concerns to anyone at AGR. According to the interview report, Respondent said that she and Moedano had a "good working relationship." Pet. Ex. 1, p. 2. The report further indicates that Respondent said she has never had any issues with Moedano and that she never told anyone that she had issues with Moedano. *Id.* Within the same paragraph of the investigator's notes, however, the investigator noted that Respondent said that she issued Moedano a performance evaluation that documented various issues, including Moedano selling items in the workplace, doing personal translations and not being a "team player." *Id.* In the next paragraph of investigator's notes, Respondent mentioned that other staff members in the Mexico City office had issues with Moedano. According to the following paragraph of investigator's notes, Respondent mentioned that she had reported these issues to three different AGR staff members in Illinois. *Id.*, pp.2-3.

As mentioned above, there is no transcript or recording of Respondent's October 7, 2016 OEIG interview. Without the benefit of a transcript or recording, Respondent's denial that she had "issues" with Moedano, appears to have been made in response to a vague interview question. Additionally, any misleading statements or obstruction related to this issue was very short-lived.

At the October 7, 2016 interview, OEIG investigators presented Respondent with, among other items, three emails dated March 26, 2015 (Pet. Ex. 6c), May 6, 2015 (Pet. Ex. 11), and

May 12, 2015 (Pet. Ex. 13). Respondent stated that she did not recall sending these emails. The May 6 and May 12, 2015 emails are short and appear to be innocuous. The May 6, 2015 email concerns Respondent making arrangements for the calculation of a severance package for Moedano. Pet. Ex. 11. Respondent acknowledges that she did that. The May 12, 2015 email concerns Respondent having a conference call with AGR-Illinois staff about Moedano. Pet. Ex. 13. Again, Respondent admitted that she engaged in such discussions. The fact that Respondent might not remember these emails a year and a half later at her interview is not sufficient evidence of obstruction.

The March 26, 2015 email (Pet. Ex. 6c), however, is more significant to the issue of Respondent's alleged obstruction or interference with the OEIG investigation. This email, sent to AGR-Illinois staff, states:

I have a feeling that the Director is going to receive a letter from [DCEO official] supported by Malena about what they perceive we do wrong in this office. I think they could be communicating with each other now that [DCEO official] is in Chicago. I do not have any idea what they are planning to do but, since [DCEO official] is leaving DCEO, I do not think is anything good. I know I cannot stop them so I thought I tell you in the event you hear about it from the Director.

PLEASE do not answer this email, since I am erasing it as soon as it leaves my desk.

The email finishes with Respondent's signature block.

OEIG investigator Reginal Spears testified at hearing that this email, labeled AGL-1, was presented to Respondent at her interview on October 7, 2016. Tr. Vol I, p. 239. Spears further testified that Respondent stated at her interview that she did not recall sending this email. *Id.* Investigator notes confirm that Respondent stated that she did not recall sending this email, and stated that she did not know how the OEIG obtained the email. Pet. Ex. 2. When asked again if she sent the email, Respondent explained that the Mexico City office has only one computer, which has access to only one email account and the lone computer is not password protected. She also stated that she is away from the Mexico City office due to a lot of traveling.

At hearing, however, Respondent denied saying at her interview that she could not recall sending the March 26, 2015 email. Tr. Vol. II pp.71-72. At the hearing, claimant insisted that she said she did send the email. *Id.*

On this issue, the Commission finds Respondent's denial to be not credible. The topic of the email is unusual and significant. It was clearly significant to Respondent when she sent it because she took the extraordinary step of deleting it after she sent it. There is no evidence that Respondent deleted any other emails after sending them. Also, as mentioned above, at her OEIG interview, Respondent offered up several reasons why the March 26, 2015 email should not be attributed to her: 1) there is only one computer in the Mexico City office; 2) the computer has access to only one email account; 3) the computer is not password protected; and 4) Respondent spends a lot of time outside of the office traveling. Respondent would not have offered so many defenses during her interview unless she did deny recalling or sending the March 26, 2015 email.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine or issuing injunctive relief. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider. These factors include: 2 Ill. Admin. Code § 1620.530(b)(2), (5), and (11):

- A. § 1620.530(b)(2)—**scope of the violations**—Evidence produced at hearing showed that Respondent Garza-Lang’s false statements to OEIG investigators were limited to one issue.
- B. § 1620.530(b)(5)—**extent of Respondent’s intent or knowledge of the facts surrounding the violation**—Respondent Garza-Lang knew that the statements she made to OEIG investigators were false when she made them. Respondent Garza-Lang intentionally made these false statements to OEIG investigators to avoid discipline.
- C. § 1620.530(b)(11)—**cooperation**—With the exception of one matter, Respondent Garza-Lang cooperated in the investigation into her wrongdoing.

WHEREFORE, for the foregoing reasons, the Commission finds that Respondent Amparo Garza-Lang violated Section 50-5(e) of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

IT IS FURTHER ORDERED that an administrative fine of \$500.00 is levied against respondent Amparo Garza-Lang in accordance with her violation of Section 50-5(e) of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

DATE: December 20, 2018