



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC Case No.: E16-0053

January 2, 2018

Lynda Lakin (Auburn)

v.

Paine Products, Inc. (Auburn)

I. Summary of Case:

Complainant Lynda Lakin alleged that Respondent Paine Products, Inc., a manufacturer of balsam items, retaliated against her for reporting allegedly unlawful deductions from her pay by discharging her. Respondent denied retaliation, and stated that Complainant was discharged for work-related behavioral problems. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based upon all of this information, the Investigator recommends that the Maine Human Rights Commission ("Commission") find reasonable grounds to believe that that Respondent unlawfully retaliated against Complainant for reporting alleged unlawful workplace activity.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: June 5, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 3, 2016.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA"), the Maine Whistleblowers' Protection Act ("WPA") and state employment regulations.
- 4) Complainant is represented by Sonia J. Buck, Esq. Respondent is not represented by counsel.

III. Development of Facts:

- 1) Complainant provided the following in support of her claims:

Complainant reported to Respondent that the hours she was paid for did not match the hours that she had worked. Complainant also reported the same issue on behalf of her boyfriend ("Boyfriend"), who also worked for Respondent. Respondent told Complainant that it deducted time for things like taking coats off, getting coffee, and going to the bathroom. Complainant argued that Respondent's practice was

unlawful, and she contacted a state agency to report Respondent. Complainant was discharged the next day and told that she was no longer a good fit with the company. Complainant stated that Respondent's reason for her discharge is pretextual and that she was discharged because of her reporting.

2) Respondent provided the following in support of its position:

Complainant was a workplace bully, who yelled and screamed at employees, and caused some to fear coming to work. Respondent spoke to Complainant multiple times over several months about her behavior. Following a discussion with Complainant about deductions from her pay, she quit. Respondent determined that Complainant was bad for employee morale and not a good fit for the company.

3) The Investigator made the following findings of fact:

- a) Complainant was hired in January 2014.
- b) Respondent alleged that it spoke to Complainant multiple times over several months about bullying and intimidating employees, and told her that some employees feared coming to work because of her.¹ Complainant denied this and stated she was never verbally counselled for behavior or performance. Complainant stated that yelling and swearing did exist in the workplace, and periodically employees would "butt heads", but apologies were made, and employees moved past the incidents.
- c) Complainant's supervisor ("Supervisor") stated that Respondent has a documented progressive discipline process.² Respondent acknowledged it did not document any disciplinary action against Complainant during her employment.
- d) Respondent provides a paid 15-minute morning break for employees who start work by 7:00 am, and a 10-minute paid afternoon break for employees who work for at least four hours after lunch.³ The unpaid lunch break is 30 minutes long.
- e) Respondent uses a timeclock for employee check in/check out. There is a sign above the timeclock stating: "Late arrivals will be paid starting with the next quarter hour." Supervisor explained that check in times of 7:53 am and 8:01 am would both be considered 8:00 start times. Employees were expected to punch in when they arrived, but to use time before their scheduled start for things like chatting or smoking. By punching in when an employee walked past the clock, he or she would avoid having to return to that area just prior to starting actual work tasks.
- f) In April 2014, Complainant first noticed that the hours she was paid for did not match the hours she actually worked. She thought it was insignificant and simply a mistake. She did not report it.
- g) Complainant stated that she reported paycheck errors to the company's President, often in passing, and that they were made up in the next paycheck. Respondent uses a payroll service and provided a record of

¹ Respondent provided information indicating that after Complainant left its employ, Respondent learned that Complainant had physically attacked another coworker. Since Respondent was not aware of this incident until after Complainant left, it could not have influenced its decisions concerning Complainant's employment.

² Progressive discipline is not described in the 2015 Employee Handbook.

³ Complainant said she would often check out on the time clock for breaks, even though she was not required to.

Complainant's paychecks from January 2015 to June 2015, as well as samples of timecards from January 2015 to April 2015. The time cards show several deductions for "extra breaks".⁴

- h) Boyfriend was hired in January 2015. He quickly noticed that hours on his paystub did not match the hours he actually worked, which he discussed with Complainant.
- i) Between April and June 2015, Complainant told President that when she worked at a prior job she was paid for "every minute" that she was there. President explained the company's pay policy to Complainant and noted that it is clearly stated above the time clock. President alleged Complainant seemed satisfied with the explanation and that Complainant said she would explain it to Boyfriend.
- j) In May 2015, Complainant had an argument with a coworker that left the coworker crying. Complainant said that it was not unlike many disagreements they had and that she apologized once she learned how upset it had made the coworker. Management did not get involved in, or respond to, this incident.⁵
- k) On June 4, 2015, Complainant met with President to discuss missing hours in her own and Boyfriend's paychecks. Complainant alleged President said Respondent docked time for "going to the bathroom", "taking off your coat", and "making coffee".⁶ Respondent denied making the statements. Complainant thought it sounded illegal, and was clear that she believed Respondent was doing something wrong. After speaking with Boyfriend outside, Complainant asked if she and Boyfriend could take the rest of the day off, and said that President approved it. President stated Complainant said, "I'm taking the rest of the afternoon off to think about things", and walked out. On the way out, Complainant stated to coworkers "[w]e're out of here" and "[p]ease out"; Respondent believed that Complainant had quit. Complainant denied that she quit.
- l) On June 4, 2015, Complainant called a state agency to inquire about what she believed to be Respondent's pay practices; she was told employers could not do the things she described. Complainant described the call as simply an inquiry, not a report; Respondent was not contacted by the state agency.
- m) On June 5, 2015, Complainant was getting ready for work when she received a call from a coworker, who stated that Respondent had locked the doors and had instructed employees not to allow Complainant or Boyfriend into the building. Complainant called the company's Vice President, who told her not to come in and that President would call her later. Respondent acknowledged that the building was secured because an employee had expressed safety concerns should Complainant and Boyfriend arrive before management.
- n) On June 5, 2015, President called Complainant and told her it was time for them to go their separate

⁴ In 23 of the weeks during 2015, Complainant worked less than 30 hours/week 12 times and more than 30 hours/week 11 times. Her check in times were always after 7:00 am, and she checked out between 2:00 pm and 4:00 pm, with few exceptions. Under the break policy Respondent described, Complainant would not have been eligible for paid morning breaks; she would only be eligible for paid afternoon breaks if her lunch period was before noon and she worked until at least 4:00.

⁵ Complainant stated she had a good relationship with the employee. Employee corroborated this but added that Complainant eventually became bossy and rude.

⁶ Respondent said it does not dock time for use of the bathroom, taking off coats, or making coffee and that Complainant misunderstood when it explained that employees may check in early to address these things, prior to the shift's beginning.

ways. When Complainant asked why, President responded that she, Vice President, and Supervisor had agreed on this. Complainant asked about Boyfriend, and President responded that it applied to him too.

IV. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator “shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 Maine Revised Statutes (“M.R.S.”) § 4612(1)(B). The Commission interprets the “reasonable grounds” standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA prohibits retaliation against employees who, pursuant to the WPA, make good faith reports of what they reasonably believe to be a violation of law. *See* 5 M.R.S. § 4572(1)(A); 26 M.R.S. § 833(1)(A).
- 3) To establish a prima-facie case of retaliation in violation of the WPA,⁷ Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; One method of proving the causal link is if the adverse job action happens in “close proximity” to the protected conduct. *Id.* at 1998 ME 227, ¶ 16, 719 A.2d at 514-15.
- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then “produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action.” *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, the Complainant must carry her overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse employment action.” *Id.* In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant’s protected activity, although protected activity need not be the only reason for the decision. *See Maine Human Rights Comm’n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 5) Here, Complainant established a prima-facie case by showing that she reported what she believed to be unlawful deductions from her own and another employee’s paychecks, and she was discharged the following day.
- 6) Respondent provided a legitimate, nondiscriminatory reason for ending Complainant’s employment, stating both that they believed she resigned, and that her behavior with coworkers had become intolerable and that she was no longer a good fit for the company.
- 7) In the final analysis, Complainant has shown that she has at least an even chance of proving that the real reason for her discharge was whistleblower retaliation, with reasoning as follows:
 - a. It is undisputed that Complainant’s last day of employment was the day that she complained to the President about Respondent’s payroll practices and what she reasonably believed to be unlawful deductions from her paycheck.

⁷ In order to determine whether Complainant has met the reasonable grounds standard, the Commission must determine whether she has at least an even chance of succeeding *at trial*. Accordingly, *Brady v. Cumberland County*, 2015 ME 143, ¶¶39 which holds that the burden-shifting analysis used here is unnecessary when a court is deciding a motion for summary judgment, is inapplicable. *Id.* at ¶ 39, n.9 (expressly not considering applicability of burden-shifting structure at trial).

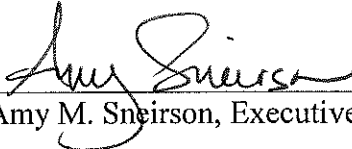
- b. Respondent's argument that Complainant quit is not credible. Complainant was upset following her conversation with the President about her concerns and left work, although it is disputed whether she requested the time off or announced it. She did not say that she was resigning, and her statements to coworkers while leaving cannot reasonably be perceived as quitting. Moreover, Respondent locked down their building the next day, which indicates that they expected Complainant to return. Further, if Complainant had quit, there would have been no need for President, Vice President, and Supervisor to meet and discuss that Complainant was not a good fit for the company any longer.
- c. Respondent's argument that Complainant was an intolerable workplace bully is also not credible. There is no written documentation of Complainant's alleged behavior, despite Respondent stating that it has a progressive discipline policy. Given the description of Complainant's supposed behavior, especially toward a valued senior employee, it is impossible to believe that her behavior was unchecked until her sudden discharge the day after her reporting her concerns about Respondent's pay practices.
- d. Respondent also discharged Boyfriend, telling Complainant that their decision applied to him, too. This further undermines Respondent's argument that the reason for Complainant's discharge was her behavior, which had nothing to do with Boyfriend.

8) Whistleblower retaliation is found.

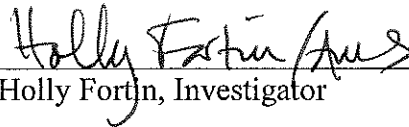
V. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

There are **Reasonable Grounds** to believe that Paine Products, Inc. retaliated against Lynda Lakin in violation of the Maine Whistleblowers' Protection Act when it discharged her; and conciliation should be attempted in accordance with 5 M.R.S. §4612(3).



Amy M. Sneirson, Executive Director



Holly Fortin, Investigator