

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

JULIE A. SU, Acting Secretary of Labor, United States :
Department of Labor, :

Plaintiff, :

v. :

P & B HEATING & AIR CONDITIONING CORP., :
CRAIG NAPOLITANO, and ROBERT :
NAPOLITANO, :

Defendants. :

Case No. 23-CV-2582

COMPLAINT

PRELIMINARY STATEMENT

1. This complaint centers around Defendants' scheme to unlawfully procure employee back wage payments and retaliate against these employees for exercising their right to just compensation under the Fair Labor Standards Act ("FLSA" or the "Act"). Defendants sought to procure these funds, otherwise known as a "kickback," by way of dishonesty, coercion, and intimidation.

2. Within weeks after P & B Heating & Air Conditioning ("P & B Heating") signed a "Back Wage Compliance and Payment Agreement" (the "Agreement") in October 2022 with the United States Department of Labor ("DOL"), Wage and Hour Division ("WHD") to pay over \$144,000 in unpaid overtime compensation owed to 25 of Defendants' employees, Defendants began a scheme to unlawfully procure from their employees the back wage payments resulting from the settlement and retaliate against them for exercising their right to just compensation under the FLSA. Defendants began approaching former and current employees with instructions to take the checks issued by DOL and turn over all proceeds to P & B Heating. Defendants falsely stated that the DOL checks included payments already made to the employees by P & B Heating,

threatened to fire employees if employees did not kick back the compensation to which they are entitled, and intimidated them by holding coercive meetings and accusing them of speaking with WHD investigators about the kickback scheme. When Defendants learned that employees began receiving back wage payments at the end of March 2023, their campaign ramped up, and Defendants ultimately succeeded with the receipt of at least one kickback payment and their employees continued fear for their financial livelihood.

3. Plaintiff, JULIE A. SU, Acting Secretary of Labor, United States Department of Labor (the “Secretary”), brings this action pursuant to the authority granted by sections 16 and 17 of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “Act” or the “FLSA”), to restrain Defendants P & B HEATING & AIR CONDITIONING CORP., CRAIG NAPOLITANO and RICHARD NAPOLITANO from retaliating against their current and former employees, in violation of section 15(a)(3) of the FLSA, and to recover back wages and liquidated damages from Defendants P & B HEATING and CRAIG NAPOLITANO for violations of sections 7 and 15(a)(2) of the FLSA, and to redress Defendants’ willful violations.

4. The Secretary is authorized under section 17 of the FLSA, 29 U.S.C. § 217, to seek injunctive relief to restrain violations of the FLSA. Because Defendants retaliated against employees and kept wages employees were legally entitled to, the Secretary seeks an order enjoining Defendants and those acting on their behalf from violating sections 15(a)(3), 15(a)(2) and 7(a) of the FLSA through intimidation, threats, harassment, or other adverse action against current or former employees as a result of their protected activity under the Act. The Secretary also seeks compensatory and punitive damages for Defendants’ willful and flagrant violations to date, back wages and liquidated damages resulting from the kickbacks, and other appropriate relief.

JURISDICTION AND VENUE

5. Jurisdiction over this action is properly conferred upon this Court by section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

6. Venue is proper in the United States District Court for the Eastern District of New York because a substantial part of the events or omissions giving rise to the claims herein occurred within this District, specifically, in Suffolk County. 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

The Parties

The Secretary

7. Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor, is vested with authority to sue to stop violations of the FLSA and is the proper plaintiff for this action.

Defendant P & B Heating & Air Conditioning Corp.

8. Defendant P & B Heating & Air Conditioning Corp. is a corporation organized under the laws of the State of New York, having its principal place of business at, 1004 Peconic Ave., West Babylon, New York 11704, in Suffolk County, within the jurisdiction of this Court.

9. During the relevant time period, P & B Heating provided installations, repairs and maintenance service of heating and cooling equipment, for both residential and commercial properties in Long Island and New York City.

10. During the relevant time period, P & B Heating employed workers to install and repair and provide maintenance services on heating and cooling equipment to its customers.

11. P & B Heating has regulated the employment of all persons employed by it and acted directly and indirectly in the company's interest in relation to the employees during the

relevant time period. Thus, P & B Heating is an “employer” of the employees within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d), and is a “person” within the meaning of section 3(a) of the FLSA, 29 U.S.C. § 203(a).

Defendant Craig Napolitano

12. Defendant Craig Napolitano (“C. Napolitano”) holds 50 percent ownership of P & B Heating.

13. C. Napolitano has been in active and operational control and management of P & B Heating throughout the relevant time period.

14. C. Napolitano has the authority to hire and fire P & B Heating employees, determine P & B Heating employee compensation and work schedules, and direct P & B Heating employees’ work during the relevant time period.

15. C. Napolitano has regulated the employment of all persons he employed and acted directly and indirectly in the interest of P & B Heating in relation to the employees during the relevant time period. He is thus an “employer” of employees within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d), and is a “person” within the meaning of section 3(a) of the FLSA, 29 U.S.C. § 203(a).

16. C. Napolitano resides in the state of New York, within the jurisdiction of this Court.

Defendant Robert Napolitano

17. Defendant Robert Napolitano (“R. Napolitano”) is the father of C. Napolitano.

18. R. Napolitano was previously an owner of P & B Heating.

19. R. Napolitano is identified by the New York State Department as the Chief Executive Officer for P & B Heating.

20. R. Napolitano intimidated and threatened employees to coerce them to return the compensation that they were owed under the FLSA.

21. R. Napolitano is a “person” within the meaning of section 3(a) of the FLSA, 29 U.S.C. § 203(a).

22. R. Napolitano resides in the state of New York, within the jurisdiction of this Court.

Defendants Are an Enterprise Covered by the FLSA

23. At all relevant times, the business activities of Defendants, as described herein, are related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

24. At all relevant times, P & B Heating was engaged in commerce or in the production of goods for commerce, which includes having employees handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce.

25. P & B Heating had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 for the entire period covered by this Complaint.

26. Defendants’ employees therefore were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of section 3(s) of the FLSA, 29 U.S.C. § 203(s)

Defendants’ Kickback Scheme and Retaliation Against Employees

27. In or around June 2021, WHD began an investigation of Defendant P & B Heating to determine whether it was in compliance with the FLSA (the “Investigation”). The Investigation covered the period from July 5, 2019, to July 4, 2021.

28. The Investigation revealed that Defendants were in violation of the FLSA's overtime requirements by failing to pay time and one-half of the employees' regular rate when employees worked over forty hours in a week.

29. Accordingly, WHD concluded that \$144,350.84 in unpaid overtime compensation was found due to a total of 25 employees.

30. On October 3, 2022, on behalf of P & B Heating, Defendant C. Napolitano signed the Back Wage Compliance and Payment Agreement to resolve the Investigation and pay WHD \$144,350.84 in back wages that would then be distributed by WHD to the 25 employees.

31. Amongst the conditions of the Agreement, Defendant C. Napolitano represented that P & B Heating was in full compliance with the FLSA, which expressly prohibits retaliation against those engaged in protected activity under the Act, and would continue to comply with the FLSA in the future.

32. Following signage of the Agreement, Defendants promptly initiated their scheme to unlawfully recoup the settlement amount and coerce employees to kick back their back wage payments to P & B Heating.

33. As early as October 2022, Defendant C. Napolitano began his efforts to procure the back wage payments even though employees had not yet received the checks from DOL.

34. C. Napolitano falsely asserted to employees that the DOL check belonged to P & B Heating, claiming that the back wage payments were duplicative of wages that P & B Heating previously paid employees.

35. R. Napolitano told employees that if they wanted to continue working for P & B Heating, they needed to turn over the DOL payments.

36. In January 2023, WHD began informing the affected employees of their upcoming back wage payments.

37. At the end of January 2023, once aware of WHD's correspondence, Defendants reiterated instructions to their employees to turn over the DOL back wage payments to Defendants.

38. In February 2023, WHD contacted Defendants' attorneys notifying them of the retaliatory conduct and instructing them to cease all retaliatory conduct.

39. On or around the beginning of March 2023, Defendants' attorneys informed WHD that they had communicated WHD's concerns to Defendants.

40. Nevertheless, Defendants continued in February and March 2023 to demand employees to turn over the back wage payments from the Agreement.

41. Beginning on Friday, March 24, 2023, the same week that some employees received their back wage payments, Defendant C. Napolitano held a series of meetings with individual employees in his office to again demand that the employees turn over their DOL payments.

42. During these series of meetings in his office, C. Napolitano required the employees to put their mobile telephones on the table to confirm they were not recording the conversation.

43. During these meetings, C. Napolitano reiterated that the back wage payments belonged to P & B Heating and "the right thing to do" was to turn them over to P & B Heating.

44. Defendant C. Napolitano stated to at least one employee that there would be "new faces in the shop by the summer" if they did not "do the right thing."

45. C. Napolitano also accused employees of speaking with DOL about Defendants' scheme to recoup the DOL checks from their employees.

46. At least one employee turned over their DOL check to P & B Heating in keeping with Defendants' demands.

47. As of the date of this filing, upon information and belief, at least one of the DOL issued payments unlawfully remains in Defendants' possession, resulting in unpaid overtime wages to at least one affected employee.

48. As a result of Defendants' conduct, employees have expressed fear in speaking with DOL about Defendants' kickback scheme.

49. Additionally, employees have expressed fear of termination from P & B Heating if they do not kick back their back wage payments.

FIRST CAUSE OF ACTION
**(Retaliation Against Employees in Violation of Section 15(a)(3) of the FLSA,
29 U.S.C. §215(a)(3), as to All Defendants)**

50. The Secretary incorporates by reference and re-alleges all foregoing allegations of the Complaint.

51. Defendants have violated section 15(a)(3) by coercing their employees, through intimidation and threats, to kick back or turn over compensation to which the employees are entitled under the FLSA.

52. As a result of Defendants' conduct set forth in the Complaint, a reasonable employee would be dissuaded from engaging in protected activity, such as keeping their wages that they are entitled or refusing to kick back their wages.

53. As a result of Defendants' conduct set forth in the Complaint, Defendants' employees are afraid to keep their back wage payments because they are concerned that Defendants will terminate their employment, affecting the employees' future livelihood, or otherwise retaliate against them.

54. By engaging in the conduct set forth in this Complaint, Defendants have willfully violated section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), by retaliating against employees for engaging in or preparing to engage in activity that is protected by the FLSA, specifically keeping the payments made by the Department of Labor in furtherance of the agreed upon settlement.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime in Violation of Sections 7(a) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207, 215(a)(3), as to Defendants P & B Heating and Craig Napolitano)

55. The Secretary incorporates by reference and re-alleges all foregoing allegations of the Complaint.

56. Upon information and belief, Defendants' intimidation tactics and threats have caused at least one employee to turn over to Defendants the overtime compensation they were due and entitled to under the Agreement.

57. Thus, at least one employee has not received all of the overtime compensation that they are owed for the time period covered by the Investigation.

58. Defendants P & B Heating and Craig Napolitano have willfully violated sections 7 and 15(a)(2) of the FLSA by demanding employees to turn over unpaid overtime compensation owed to them under the Agreement.

59. Therefore, under sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), Defendants P & B Heating and Craig Napolitano are liable for the amount of unpaid overtime compensation that is still owed to their employees for the time period covered by the Investigation, and an additional equal amount in liquidated damages pursuant to section 16(c) of the Act, or in the event liquidated damages are not awarded, overtime wage compensation and prejudgment interest on said overtime compensation under section 17 of the Act.

WHEREFORE, cause having been shown, the Secretary respectfully requests this Court enter judgment against Defendants providing the following relief:

a. An injunction pursuant to section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, successors, and those persons in active concert or participation with Defendants, from causing any current or former employees due back wages under the October 3, 2022 Back Wage Compliance and Payment Agreement (the “Agreement”) to kick back or turn over any back wages found due to the employees under the Agreement;

b. An injunction pursuant to section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, successors, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid overtime compensation found due to Defendants’ employees during the Investigation;

c. An injunction pursuant to section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, successors, and those persons in active concert or participation with Defendants, from deducting from the current wages due to any current employee for hours worked any back wages paid to that employee pursuant to the Agreement;

d. An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, successors, and those persons in active concert or participation with Defendants, from violating the provisions of section 15(a)(3) of the Act, including by: terminating or threatening to terminate any employee; blacklisting or threatening future employment; withholding wages or threatening to withhold wages; or intimidating, coercing, threatening, retaliating or discriminating against any employee or former employee in any other way, based upon Defendants’ belief that such employee has or will speak with the Department of Labor, does not return the back wages they received pursuant to the

Agreement, intends to testify in any proceeding under the Act, has complained about wage violations, or has engaged in any other protected activity.

e. An injunction pursuant to section 17 of the Act requiring that all current and former employees who received back wages pursuant to the Agreement be notified that they have the right to receive and keep the back wages due to them pursuant to the Agreement.

f. An injunction pursuant to section 17 of the Act requiring that at least seven days prior to any termination of any employee for any reason, Defendants shall provide a written notice to the Wage and Hour Division of the U.S. Department of Labor.

g. An order pursuant to section 16(c) of the Act finding Defendants liable for unpaid overtime compensation found due Defendants' employees who have been found to have kicked back wages and an equal amount of liquidated damages.

h. In the event liquidated damages are not awarded, an order pursuant to section 17 of the Act restraining Defendants, their officers, agents, servants, employees, successors, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid overtime compensation found due Defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

i. An order awarding compensatory and punitive damages for Defendants' retaliation against employees in violation of sections 15(a)(3) of the Act.

j. An order awarding Plaintiff the costs of this action.

k. An order granting such other relief as the Court may deem necessary or appropriate.

DATED: April 4, 2023
New York, New York

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