



MAINE DEPARTMENT OF LABOR FINAL DECISION

BUREAU OF LABOR STANDARDS

vs.

2024 - BLS - 22

Lufkin Toys

History of the Case:

This is a proceeding initiated by a determination on October 18, 2024, by the Maine Department of Labor, Bureau of Labor Standards (BLS) against Lufkin Toys (Appellant), a State of Maine employer. That determination alleged violations of Maine Labor Laws,

26 MRS §621-A Timely and Full Payment of Wages,

26 MRS §622, Keeping Wage Records,

26 MRS §629 (1) Unfair Agreements,

26 MRS §664 Minimum Wage,

26 MRS §672 Unfair Contracts,

26 MRS §772 Hazardous Occupations,

26MRS §774(7) Record of Work Hours of Minors.

It ordered total penalties under 26 MRS §§53 and 626-A in the amount of \$51,134.00.

On October 31, 2024, the Appellant timely contested the determinations and sought review.

BLS subsequently designated the undersigned hearing officer to conduct the review. After due notice, a hearing was held on March 17, 2024, in Bangor Maine. Anne Macri, Assistant Attorney General represented the BLS. Todd Lufkin represented himself and Lufkin Toys.

Witnesses:

BLS submitted the testimony of Scott Cotnoir and Steven Spencer.

The Appellant submitted the testimony of Todd Lufkin, [REDACTED] and [REDACTED].

Exhibits:

BLS presented six exhibits that were admitted without objection.

Exhibit 1) October 18, 2024, BLS Citation Letter

Exhibit 2) D-2 Inspection Report

Exhibit 3) D-3 BLS Case Notes

Exhibit 4) March 19, 2024, letter from Cotnoir to Lufkin.

Exhibit 5) OSHA inspection report

Exhibit 6) Lufkin Facebook posting

Issues:

Whether the Appellant violated the Bureau of Labor statutes and rules.

Whether the Appellant is subject to penalties for violations of those statutes and rules.

Findings of Fact

Todd Lufkin is a lifelong resident of Bradford Maine in Penobscot County. Throughout his career he has been employed full and part-time in the wood and lumber industries in and around Bradford. His duties include transporting wood and wood production.

In addition to his work as an employee in the Bradford area, since the 1990s, he also operated a self-employment business located at his home in Bradford. That business sells small wood structures to retail customers including sheds, outhouses, and greenhouses. Some of these wood products were wholesaled through farm stores in the Bangor area. He constructs these structures in a large barn on his property.

On a regular basis friends, neighbors, family, and friends assisted Lufkin in his independent business. Lufkin did not maintain any wage and hour records of their assistance. In August 2022, the BLS received a wage and hour complaint against the Appellant. In May 2023, BLS followed up on the complaint.

On November 9, 2022, [REDACTED] a friend of Lufkin's son, was assisting in the construction of a shed on the premises. At the time he was a 17-year-old minor. He fell off the roof of the shed that was being constructed. He was injured and required professional medical care. OSHA investigated the accident. It took no enforcement action. The incident was widely known in Bradford.

On May 16, 2023, the BLS assigned an inspector, Steven Spencer, to investigate whether there were any wage and hour violations. The investigation continued through April 2024. Spencer interviewed Lufkin at his home and business in Bradford. Lufkin denied employing any employees in his home business. He admitted that neighbors, family, and friends have helped construct the structures that he sold to retailers. He admitted that he paid them in cash or by bartering materials and services.

Lufkin admitted to Spencer that he avoided employer paperwork because it was time consuming and costly.

The Appellant was afforded by the BLS a number of opportunities to establish its wage and hour practices. This included reconstructing wage records of when people worked, what he paid them, etc. The Appellant did not do so. In the absence of records, BLS made assumptions about the employment of individuals who provided labor. In particular, it assumed hours of two adults [REDACTED] and [REDACTED] employees between April 1, 2022, through June 30, 2022. It also assumed [REDACTED] was employed for hours on November 9, 2022.

REASONING

I Timely and Full Payment of Wages

MRS Section 621-A, provides "Timely and Full Payment of Wages":

1. Minimum frequency and full payment. At regular intervals not to exceed 16 days, every employer must pay in full all wages earned by each employee, except members of the family of the employer and salaried employees. Each payment must include all wages earned within 8 days of the payment date. Payments that fall on a day when the business is regularly closed must be paid no later than the following business day. An employee who is absent from work at a time fixed for payment must be paid as if the employee was not absent.

2. Regular pay Timely and Full Payment of Wages

The Appellant did not establish regularly recurring pay intervals in this instance. Therefore, in order to calculate the number of violations of this section, BLS used the greatest period of time allowed between pay dates which is 16 days. In this case, the Appellant failed to pay the following employees in full at intervals not to exceed 16 days on 13 separate occasions.

██████████ was not paid in full on 6 separate pay dates between 4/1/2022 and 6/30/2022.

██████████ was not paid in full on 6 separate pay dates between 4/1/2022 and 6/30/2022.

██████ was not paid in full on 1 pay date for work performed on 11/9/2022.

Number of Violations: 13

II Records

26 MRS Section 622 provides:

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. Every employer shall keep a daily record of the time worked by each such employee... Records required to be kept by this section must be accessible to any representative of the department at any reasonable hour.

The BLS counts each day on which an employer fails to “keep a daily record of the time worked by each such employee” as a separate violation. Each pay cycle that an employer fails to keep a record of the amount paid to each employee is also considered a separate violation.

In this case, the Appellant failed to keep daily time records on the following employees on the following dates:

██████████, 2 daily records per week for 13 weeks between 4/1/2022 and 6/30/2022.

██████████ 2 daily records per week for 13 weeks between 4/1/2022 and 6/30/2022 for a total number of violations: 52.

III Unfair Agreements

26 MRS Section 629(1), titled “Unfair Agreements”, provides:

...A person, firm or corporation may not require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, oral, written or implied, that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding compensation insurance, that an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building...

In this case, the Appellant was required or allowed the following employee(s) to work without monetary compensation during the following pay cycles based on the minimum number of pay periods required in accordance with Section 621-A:

██████████ worked two days per week without monetary compensation during each of the weeks between 04/01/2022 and 06/30/2022 for a total of 6 minimum pay cycles.

██████████ worked two days per week without monetary compensation during each of the weeks between 04/01/2022 and 06/30/2022 for a total of 6 minimum pay cycles.

██████ worked without monetary compensation for work performed on 11/09/2022.

Violations: 13

IV Minimum Wage

26 MRS Section 664 provides, except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. That minimum wage is calculated as follows:

On January 1, 2021, and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢...

The minimum wage in 2022 was \$12.75.

For the period in question, the Appellant failed to pay ██████████ at least minimum wage in each of the 13 weeks that he worked between 04/01/2022 and 06/30/2022.

The Appellant failed to pay ██████████ at least the minimum wage in each of the 13 weeks that he worked between 04/01/2022 and 06/30/2022.

The employers failed to pay [REDACTED] at least the minimum wage for the work performed on 11/09/2022.

Violations: 27

V Unfair Contract

Subchapter 3, Section 672 of Title 26 provides:

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter.

Subchapter 3 addresses minimum wage, overtime, and certain record keeping requirements.

In this case, the Appellant exempted themselves from the minimum wage requirements of this subchapter with the following employees, on the following date(s):

[REDACTED] for 13 separate weeks between 04/01/2022 and 06/30/2022.

[REDACTED] for 13 separate weeks between 04/01/2022 and 06/30/2022.

[REDACTED] for work performed on 11/9/2022.

Violations: 27

VI Unfair Contract

Subchapter 3, Section 672 of Title 26 (materially) states:

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter.

Subchapter 3 addresses minimum wage, overtime, and certain record keeping requirements.

In this case, the employer exempted themselves from the minimum wage requirements of this subchapter with the following employees, on the following date(s):

[REDACTED] for 13 separate weeks between 04/01/2022 and 06/30/2022.

[REDACTED] for 13 separate weeks between 04/01/2022 and 06/30/2022.

[REDACTED] for work performed on 11/9/2022.

Violations: 27

VII Record of Work Hours of Minors

26 MRS Section 774(7) provides:

Every employer shall keep a time book or record for every minor employed in any occupation, except household work or the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, stating the number of hours worked by each minor on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a deputy of the

director or any authorized agent of the bureau. An employer who fails to keep the time book or record required by this subsection or who makes any false entry to the time book or record, refuses to exhibit the time book or record or makes any false statement to the director, a deputy of the director or any authorized agent of the bureau in reply to any question in carrying out this section is liable for a violation of this section and is subject to penalties specified in section 781.

The Appellant failed to keep a daily time record on [REDACTED] a 17-year-old minor, for work performed on 11/09/2022.

Violations: 1

Summary of Violations and Penalties

Table 1, below, sets out the total number of violations.

Table 1: Total Violations

Statute	Number of Violations
26 M.R.S. § 621-A (Timely and full payment of wages)	13
26 M.R.S. § 622 (daily time records)	52
26 M.R.S. § 629 (unfair agreements)	13
26 M.R.S. § 664 (minimum wage)	27
26 M.R.S. § 672 (unfair contract)	27
26 M.R.S. § 772 (hazardous occupations)	1
26 M.R.S. § 774(7) (record of hours -minors)	1
TOTAL	134

Penalties

When assessing fines, Title 26 MRS §53 provides:

...[T]he director may assess a fine against any an employer, officer, agent or other person that violates any provision of chapter 7, subchapters 1 to 4 for each violation of those subchapters. The fine may not exceed \$1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. In addition, the director may order any employer, officer, agent or other person that the director finds is in violation under chapter 7, subchapters 1 to 4 or section 1312 to pay unpaid wages determined to be due, as well as an additional amount equal to twice the amount of unpaid wages as liquidated damages and a reasonable rate of interest. ...The director shall adopt rules to govern the administration of the civil money fine or penalty provisions. The rules must include a right of appeal by the employer and a range of monetary assessments with consideration given to the size of the employer's business, the good faith of the employer, the gravity of the violation and the history of previous violations...

The Rules referred to above are entitled: *Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations*. Pursuant to these rules, the number of violations are multiplied by \$1,000. The result is reduced if the employer has fewer than 100 employees, no history of previous violations, the employer is not being cited for multiple or grave violations, and the employer has demonstrated “good faith”, all of which are defined in the rules.

Employer size is the only relevant criterion to the imposition of fines in this case. Using the smallest employer size category, pursuant to Section II (1), the penalty is reduced by 33.3%.

Timely and Full Payment of Wages; Records; and Unfair Agreements

The violations for timely and full payment of wages (Section 621-A), records (Section 622), and unfair agreements (Section 629) are subject to the penalty range set out at Section 626-A, which provides: “Whoever violates any of the provisions of...sections 621-A to 623...is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.”

There are 78 violations in this category. Chapter 9 Rules require computation at \$1,000. The \$1,000 figure is multiplied by the 78 violations resulting in a penalty amount of \$78,000. The penalty is then reduced by 33% for employer size, resulting in a penalty amount of \$52,026. Since the statutory maximum cannot exceed \$500 per violation, the penalty is reduced by \$13,026, resulting in a **total penalty amount of \$39,000 for the violations in this category.**

Minimum wage and Unfair Contracts

The violations for minimum wage (Section 664) and unfair contracts (Section 672) are subject to the penalty range set out at Section 671, which provides: “Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$200.

There are 54 violations in this category. Chapter 9 Rules require the calculation to start at \$1,000. The \$1,000 figure is multiplied by the 54 violations resulting in a penalty amount of \$54,000. The penalty is then reduced by 33% for employer size, resulting in a penalty amount of \$36,018. Since the statutory maximum cannot exceed \$200 per violation, the penalty is reduced by \$25,218, resulting in a **total penalty amount of \$10,800 for the violations in this category.**

Hazardous Occupations and Record of Hours of Minors

The violations for hazardous occupations (Section 772) and record of hours of minors (Section 774(7)) are subject to the penalty range set out at Section 781, which provides: “An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000;
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$2,000 nor more than \$10,000.”

There are 2 violations in this category. Chapter 9 Rules require calculations to start at \$1,000. The \$1,000 is multiplied by the 2 violations resulting in a penalty amount of \$2,000. The penalty is then reduced by 33% for employer size, resulting in **a total penalty amount of \$1,334 for the violations in this category.**

TOTAL PENALTY. The total penalty for the above violations is \$51,134.00.

Conclusions of Law

As explained in parts I to VII of this decision, The Appellant has violated Labor statutes and rules.

Because the Appellant violated the Labor statutes and regulations, it is subject to penalties as enumerated.

Recommended Decision:

The parties were given the opportunity to submit written objections or other comments on the Recommended Decision to the Hearing Officer. The BLS made a editing suggestion. Nothing was received from the Appellant.

For the reasons stated above, the Appellant violated Labor Laws and Rules resulting in a penalty of \$51,134.0 that is assessed against the Appellant.

This is the Final Decision and final agency action within the meaning of 5 M.R.S. §11001. The Final Decision will be sent by U.S. mail, hand delivery or by email to all parties.

This Final Decision of the Hearing Officer is subject to review by the Superior Court, pursuant to 5 M.R.S. §11001.

Allan Toubman
Hearing Officer

Date 05/14/2025