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STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:	
SAGER SPUCK STATEWIDE SUPPLY CO., INC.,	
Petitioner,	
	DOCKET NO. PR-06-058
To review under Section 101 of the New York State Labor Law An Order to Comply with Article 6 of the Labor Law, dated June 16, 2006	RESOLUTION OF DECISION
-against-	
THE COMMISSIONER OF LABOR,	
Respondent.	

WHEREAS:

The Petition for review in the above-captioned case was filed with the Industrial Board of Appeals (Board) on August 14, 2006. The Answer was filed on September 19, 2006. Upon notice to the parties a hearing was held on January 19, 2007 in the Board's Albany office before Khai Gibbs, then Associate Counsel to the Board and designated Hearing Officer in this proceeding.

Petitioner Sager Spuck Statewide Supply Co., Inc. (Petitioner) was represented by the Sugarman Law Firm, Thomas K. Frederick of counsel, and Respondent Commissioner of Labor (Commissioner) was represented by Maria Colavito, Counsel to the Department of Labor (DOL), Jeffrey G. Shapiro of counsel. Each party was afforded full opportunity to present documentary evidence, to examine and cross-examine witnesses and to make statements relevant to the issues. In accordance with arrangements made at the conclusion of the hearing, both counsel filed post-hearing memoranda.

The Order to Comply under review here was issued on June 16, 2006. The Order finds that Petitioner made unlawful deductions from employee Craig Lanning's (Claimant) wages contrary to the

provisions of Labor Law § 193 and directs payment to the Commissioner, for wages due and owing to Claimant in the amount of $10,044.48 for the period of January 1, 2002 through May 7, 2004, with interest continuing thereon at the rate of 16% calculated to the date of the Order, in the amount of $3,390.35, and assesses a civil penalty in the amount of $2,510.00, for a total due of $15,944.83.

SUMMARY OF THE EVIDENCE

The facts of this case are not in dispute. Petitioner is an industrial distribution company. Claimant Craig Lanning worked for Petitioner from February 21, 1994 to April 30, 2004 as an inside salesman.

On December 23, 1994, Claimant completed and signed a group enrollment form applying to participate in the company's medical insurance program with Blue Shield. At first, deductions were taken from Claimant's wages to pay for health insurance premiums. On or about May of 1996, Claimant's compensation was changed after Claimant received an offer of employment from another company. The new compensation package provided that Petitioner would pay 100% of Claimant's health insurance premium. From May 1996 through December 2001, no deductions were made from Claimant's wages for health insurance premiums.

On January 7, 2000, Claimant signed a "Flexible Benefits Plan Election Form and Compensation Reduction Agreement" (Exhibit D). Included in the form is the following provision:

> "ELECTION FOR INSURED BENEFITS
>
> "On the appropriate benefit enrollment form(s) of any insurance company, I have enrolled for certain insurance coverage's.
>
> "Unless I make an election NOT to receive these benefits, I authorize salary reductions in the amount of current premiums being charged by each insurance company.
>
> "I understand that if my required contributions to pay premiums for the elected benefits are increased or decreased while this agreement remains in effect, my compensation reduction will automatically be adjusted to reflect that increase or decrease."

The last page of the form provides that employees will be offered the opportunity to change their benefit elections on the first day of each plan year, and if a new election form is not completed the employees will be treated as having elected to continue their Health Care/Dental Coverage election. "In addition, this compensation reduction agreement will continue by its terms in the amount of the required contribution for the health care/dental options."

At the time that Claimant signed the Election Form, no deductions were being taken from his wages for health or dental premiums. No further forms or authorizations for deductions were signed by Claimant.

In December of 2001, Petitioner faced a downturn in its economic outlook. It, therefore, decided that it would no longer pay 100% of Claimant's health insurance premiums. On December 4, 2001, Petitioner's employees, including Claimant, were notified of the change, and each was provided with a memorandum detailing their individual deduction. Starting with the payroll commencing January 1, 2002, deductions were taken from the Claimant's wages to contribute to his health insurance premium. $76.05 was deducted each payroll period until July 18, 2002 when the deduction was increased to $89.63.

Claimant calculated the total deductions from January 1, 2002 to April 30, 2004 to be $10,044.48. Petitioner raised the issue at the hearing that there might be some deductions for Claimant's 401k plan included in that figure but provided no information to substantiate that allegation.

After Claimant left Petitioner's employ, he filed a claim with DOL alleging that per his agreement with the company, his premiums were supposed to be paid by the company and not deducted from his pay and that he never gave written approval for the deductions. Three other claims were filed against Petitioner for similar reimbursements of premium deductions. In the other three cases, Petitioner entered into a Settlement Agreement and payment plan with DOL for payment of the wages to the employees. In contrast, Petitioner contested the claim of Lanning due to the fact that it believed that it had written authorization to make the deductions in Lanning's case because he signed an enrollment form for the health benefits in 1994 and then signed an election form in 2000 which provided that any necessary premiums could be deducted from his wages unless he elected not to for any plan year.

Lanning's claim was filed in November 2005, and Petitioner was notified of the claim that same month. Correspondence was exchanged between Petitioner and DOL regarding the legal authority for requiring Petitioner to reimburse the Claimant for the deductions. DOL referred the Petitioner to Labor Law § 193. An Order to Comply was issued to Petitioner on June 16, 2006 which included a Schedule of Unlawful Deductions providing that $10,044.48 was due Claimant.

GOVERNING LAW

1. Standard of Review

In general, the Board reviews the validity and reasonableness of an Order to Comply made by the Commissioner upon the filing of a Petition for review. The Petition must specify the order "proposed to be reviewed and in what respects it is claimed to be invalid or unreasonable. Any objections ...not raised in the [Petition] shall be deemed waived." (Labor Law § 101).

When reviewing an Order to comply issued by the Commissioner, the Board shall presume that the Order is valid. Labor Law § 103.1 provides, in relevant part:

> "Every provision of this chapter and of the rules and regulations made in pursuance thereof, and every order directing compliance therewith, shall be valid unless declared invalid in a proceeding brought under the provisions of this chapter."

Pursuant to Board Rule 65.30: "The burden of proof of every allegation in a proceeding shall be upon the person asserting it." (12 NYCRR § 65.30). Therefore, the burden is on the Petitioner to prove that the Order under review is not valid or reasonable in the respects asserted in its Petition.

2. Deductions from Wages

Under Labor Law, Article 6, § 193, an employer is prohibited from taking deductions from an employee's wages, except under limited circumstances. Labor Law § 193 (1) provides, in pertinent part:

> "...No employer shall make any deduction from the wages of an employee, except deductions which:
>
> a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or

> b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee."

At issue in this case is whether the wage deduction for insurance premiums was "expressly authorized in writing" by Claimant. In determining the meaning of that phrase and its application in this case, we must look to the rules of statutory construction. Statutes § 213 provides: "Exceptions [to statutes] must be strictly construed in order that the major policy underlying the legislation itself is not defeated." (*See also In the Matter of Radich v. Council of City of Lackawanna*, 93 AD2d 559, 562, 462 NYS2d 928, 931 [1983] *aff'd* 61 NY2d 652 ["A statutory exception must be strictly construed so that the major policy underlying the legislation is not defeated. Exceptions extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exception"]).

In the case of wage deductions, the general rule is that "no employer shall make any deductions from the wages of an employee."[1] Therefore, the exception for certain deductions "expressly authorized in writing" must be strictly construed.

FINDINGS

The Petitioner is a private employer doing business in the State of New York, as defined by Labor Law Section 190.3, and is subject to the jurisdiction of the Commissioner of Labor.

The deciding question in this case is whether Claimant's signature on the Flexible Benefits Plan and Compensation Reduction Agreement on January 7, 2000 was an express authorization in writing sufficient for the wage deductions taken by Petitioner commencing January 1, 2002 to cover health insurance premiums. Given the strict construction which we must give this exception to the general prohibition against deductions from wages, we must answer "no" to that question.

As stated by Respondent, in her brief, paragraph 10:

> "At the time the Agreement was signed, no deductions were being made from the Claimant's wages. There is no evidence in the record that the Claimant was ever given notice, at the time the Agreement was signed, or for almost two years afterward, that any wage deductions would be made as a result of the Agreement."

Section 193's "express authorization" has been interpreted by the courts to mean "with consent" and "voluntary." (*See, e.g., Huntington Hospital v. Huntington Hospital Nurses' Assn.*, 302 FSupp2d 34, 42 [EDNY 2004]["In general terms, Section 193 prohibits an employer from making deductions from an employee's wages without the employee's consent"]).

In order to "expressly authorize" deductions, an employee must have knowledge of the specific deductions and the amounts that are being authorized at the time that he is signing the authorization. A

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[1] Courts have recognized the special status of wages from at least the U.S. Supreme Court decision in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) which held that wage garnishment, absent a prior hearing, violated due process. Wages are "a specialized type of property presenting distinct problems in our economic system." *Id.* at 340.

signature on a general provision is not an express authorization for possible future deductions for unspecified amounts. In this case, Claimant's signature on a general provision almost 2 years prior to the deduction, when the actual deduction was not even anticipated is insufficient.

CIVIL PENALTIES FOR FAILURE TO PAY WAGES

The Order assessed 25% of the unpaid wages in civil penalties. Although we find that Petitioner did not properly deduct Claimant's wages pursuant to Labor Law § 193 because there was no express written authorization, we note that Claimant was orally advised of the actual deductions prior to the deductions being made from his wages and thus was on notice that his contract for employment no longer included payment of his insurance premiums and that deductions were going to be made. Therefore, under these circumstances, where the employer has in no way benefited from the deductions and the deductions have benefitted the employee, the Board finds that a civil penalty, in this instance, is unreasonable and modifies the order by eliminating the penalty.

INTEREST

Labor Law § 219 provides that when the Labor Commissioner determines that wages are due, then the order directing payment shall include "interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of payment. Banking Law section 14-A sets the "maximum rate of interest" at "sixteen percent per centum per annum."

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Order to Comply with Article 6 of the Labor Law, dated June 16, 2006, is hereby affirmed, as modified.

2. That the Petition for review, be and the same hereby is, denied.

Anne P. Stevason, Chairman*

Mark S. Perla, Member

Gregory A. Monfelcone, Member

Susan Sullivan-Bisceglia, Member

J. Christopher Meagher, Member

Dated and Filed in the Office of the
Industrial Board of Appeals,
at Albany, New York,
on November 28, 2007.