UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRIAN TRASK,
1873 County Road 18
Wellsville, New York 14895

Plaintiff,

v.

TOWN OF ALMA
P.O. Box 67
5838 Allen Street
Allentown, New York 14707

DANIEL FORD
5827 Allen Street
Allentown, New York 14707

RONALD STAEDT
1615 White Hill Road
Allentown, New York 14707

Defendants.

COMPLAINT

Civ. No.:

Plaintiff Brian Trask, through his attorney, Michael F. Geraci, Esq., of Geraci Law Offices, as and for his Complaint in this matter states as follows:

PARTIES:

1. Plaintiff Brian Trask is a citizen of the State of New York, resides within the jurisdiction of this Court and is an employee of the Defendant Town of Alma within the meaning of 29 U.S.C. § 203(g).

2. Defendant Town of Alma is a political subdivision of the State of New York.

3. Defendant Daniel Ford is a citizen of the State of New York, resides within the jurisdiction of this Court, and is the elected Superintendent of Highways for the Town of Alma.

4. Defendant Ronald Staedt is a citizen of the State of New York, resides within the jurisdiction of this Court, and is the elected Supervisor for the Town of Alma.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1337 and FLSA § 16(b), 29 U.S.C. § 216(b).

6. Venue in this Court is proper as the causes of action arose and the Plaintiff resides within the geographic jurisdiction of this District.

FACTS

7. Pursuant to New York Town Law § 20, among the officers elected by the Town of Alma are a "Supervisor" and a "Superintendent of Highways".

8. Ronald Staedt ("Supervisor Staedt") is the current Supervisor for the Town of Alma.

9. The Town of Alma maintains a Highway Department which is headed by an elected Superintendent of Highways.

10. Daniel Ford ("Superintendent Ford") is the duly elected Superintendent of Highways for the Town of Alma.

11. Pursuant to New York Highway Law § 140(4) the Superintendent of Highways is responsible for the hiring, monitoring and direction of those employees of the Town working at the Highway Department.

12. Since on or about December 1, 2018, Trask, at the direction of the Superintendent of Highways, has performed the duties of Heavy Motor Equipment Operator ("HMEO") for the Town of Alma.

[illegible]

A. [illegible]

within the jurisdiction of [illegible] Department of Highways

[illegible]

B. The Contractor [illegible]

and [illegible] 1.3.6.3 [illegible])

C. Vehicle [illegible] provided [illegible] the Department

[illegible]

[illegible]

D. [illegible] Contractor [illegible] a [illegible]

[illegible] of Alone [illegible] "Supervisor" [illegible] "[illegible]"

E. [illegible] Supervisor [illegible] Supervision [illegible]

[illegible]

F. The Long [illegible] Highway [illegible] authorized by an

[illegible] supervision of Highways.

G. Special Road [illegible] Highway [illegible]

Highways [illegible]

H. Pursuant to [illegible] Highway [illegible] the Superintendent of

Highways is responsible for the hiring, monitoring, [illegible] other [illegible] employees within

[illegible] the Highway [illegible]

I. [illegible] Section [illegible] 2012. [illegible] at the direction of the

Superintendent of Highways, [illegible] of Highway [illegible] Equipment

Operator (PMEO) [illegible]

13. Since on or about February 1, 2019 the Town of Alma has refused and continues to refuse to pay Trask agreed-upon wages in a timely manner in violation of the Fair Labor Standards Act, 29 USC sec. 201 et seq. ("FLSA").

14. A superintendent of highways directs town employees in the interest of the town and therefore incurs liability on the part of the town.

15. On or about December 7, 2018, Superintendent Ford appointed Trask to the position of Heavy Motor Equipment Operator ("HMEO") within the Highway Department.

16. Trask's appointment was subject to a sixty-day probationary term.

17. On or about February 5, 2019, Highways Superintendent Ford reported to the Alma Town Board that Trask had successfully completed his probationary period and was a full-time employee of the Highway Department.

18. At various times relevant hereto the Supervisor of the Town of Alma has asserted that (a) Trask failed to satisfactorily complete his probationary term; (b) Trask was discharged for cause during his probationary term; (c) funding for Trask's position was removed from the Town budget; and (d) Trask's presence on Town property constitutes trespassing.

19. Notwithstanding the positions taken by the Town Supervisor, Trask has performed and continues to perform the duties of an HMEO under the direction of the Superintendent of Highways, and to the Town's benefit.

20. In accordance with the payroll procedures of the Town of Alma, the Superintendent of Highways certifies, each payroll period, the number of hours Trask has

worked, and the certification of the Superintendent of Highways has put the Town on notice that Trask is being permitted or suffered to work.

21. Notwithstanding the certification by the Superintendent of Highways that Trask is working, the Town, since on or about February 1, 2019 has failed and refused to timely pay Trask his regular rate for all hours worked plus time and one-half for overtime as required by the FLSA. 29 U.S.C. §§ 206 & 207.

22. Trask previously filed a Complaint against the Town of Alma on or about September 5, 2019 asserting a claim for unpaid wages owed to Trask by the Town (WDNY Civil Case No. 19-cv-01192).

23. On or about October 30, 2020, United States District Court Judge Christina Reiss issued an Opinion and Order granting in part and denying in part the Town's Motion for Summary Judgment and denying Trask's Cross-Motion for Summary Judgment.

24. Judge Reiss' Opinion and Order determined that the Town was not a "joint employer" of Trask, but recognized Superintendent Ford's relationship to the Town and authority to hire and pay Trask. The Court declined to make a ruling on whether the Town was liable to pay the claim against Superintendent Ford as Trask's employer on behalf of the Town as that matter was not briefed before the Court.

25. In hopes that the Town would begin paying Trask for his work as an HMEO for the Town, the Town Board Majority voted in favor of a Resolution in February 2020 to reinstate a third full-time Highway Department position.

26. The Town Board majority then voted in favor of a Resolution in February 2020 stating that "the Town Supervisor is directed to timely honor all vouchers issued

since January 1, 2020 by the Superintendent of Highways for the payment of wages to Brian Trask."

27. The Town's February 2020 Resolution further states that "in the event that the Supervisor fails to carry out the resolution, damages are imposed on the Town, that the Supervisor shall be personally responsible for reimbursing the Town for such damages."

FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT)

28. Since on or about December 1, 2018, Trask, at the direction of the Superintendent of Highways, has performed the duties of an HMEO for the Town of Alma.

29. Since on or about February 1, 2019 the Town of Alma has refused and continues to refuse to pay Trask agreed-upon wages in a timely manner in violation of the Fair Labor Standards Act, 29 USC sec. 201 et seq.

30. In an effort to compel the Town to begin paying Trask for his work as an HMEO for the Town, the Town Board Majority voted in favor of a Resolution in February 2020 to reinstate a third full-time Highway Department position, and further that "the Town Supervisor is directed to timely honor all vouchers issued since January 1, 2020 by the Superintendent of Highways for the payment of wages to Brian Trask."

31. The Town's February 2020 Resolution further states that "in the event that the Supervisor fails to carry out the resolution, damages are imposed on the Town, that the Supervisor shall be personally responsible for reimbursing the Town for such damages."

32. The Superintendent of Highways has certified all of Trask's pay going back to December 2018, including since the Resolution was passed in February 2020

instructing the Town Supervisor to timely honor all vouchers issued by the Superintendent of Highways for the payment of wages to Brian Trask.

33. Despite the clear and unequivocal language of the resolutions passed by the Town Board majority in February 2020, the Town has continued to fail to timely pay Trask his regular rate for all hours worked plus time and one-half for overtime as required by the FLSA. 29 U.S.C. §206 & §207.

34. The Town has knowingly and willfully failed to pay regular wages and overtime pay to Trask in a timely manner each bi-weekly payday since February 1, 2019, and therefore is required to pay Trask, in addition to the wages certified by the Highway Superintendent, liquidated damages in an amount equal to the unpaid wages.

35. The Town has continued to knowingly and willfully refuse to pay regular wages and overtime pay to Trask despite the Resolution passed by the Town in February 2020 directing that Trask be paid all wages certified by the Superintendent of Highways since January 1, 2020.

PRAYER FOR RELIEF

36. Wherefore, based on the Defendants failure to timely pay wages and overtime as required by the FLSA, Trask is entitled to a judgment (1) directing the Defendants to comply with the prompt payment requirement of the FLSA; (2) paying Trask the contractually-required wages and overtime pay for all employed hours with respect to each pay period since February 1, 2019 (or in the alternative for each pay period since January 1, 2021); (3) awarding an equal amount as liquidated damages; and (4) awarding costs, including reasonable attorney fees as permitted by the FLSA; together with such other and further relief as to the Court may seem just and proper.

Dated: May 4, 2021

GERACI LAW OFFICES

/s/ Michael F. Geraci

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