

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHY WALKER : CIVIL ACTION
 :
 v. :
 :
 :
 WASHBASKET WASH & DRY, :
 CLAIR L. SOURS, and MILDRED SOURS : NO. 99-4878

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 5, 2001

Plaintiff Cathy Walker ("Walker"), filing a complaint against Washbasket Wash & Dry ("Washbasket"), its owners, Clair and Mildred Sours and their son, Thomas Sours,¹ alleged violations of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. ("FLSA"). Plaintiff also alleged violations of the Pennsylvania Wage and Payment Collection Law, 43 P.S. §260.1 et seq. ("WPCL"), and Minimum Wage Act of 1968, 43 P.S. §333.101 et seq. ("MWA").

Plaintiff argued defendants failed to: (1) pay minimum wages; (2) pay overtime; (3) keep proper records; (4) post notices at the worksite; and (5) pay minimum wages and overtime when due. She also alleged that defendants retaliated against her by terminating her employment when she filed a complaint with the Department of Labor. Defendants filed a counterclaim for

¹All claims against Thomas Sours were dismissed with prejudice by Order dated January 24, 2001.

rent due on plaintiff's lease; defendants waived this counterclaim at trial. Tr. 2/40. The court held a non-jury trial on plaintiff's claims. In accordance with Federal Rule of Civil Procedure 52(a), the court enters the following findings of fact and conclusions of law:

I Findings of Fact

1. Defendants Clair and Mildred Sours, a partnership, have owned and operated Washbasket Wash & Dry ("Washbasket" or "the laundromat"), a coin-operated, self-service laundromat located at 268 South 20th Street, Philadelphia, Pennsylvania, for eighteen years. Tr. at 168. The laundromat does approximately \$1500 in business per week. Tr. at 2/29.

2. The Sours also owned a laundromat at 23rd and Spruce Streets, Philadelphia, Pennsylvania through 1996. Tr. at 18.

3. The Sours owned two other laundromats between 1997 and 1999. Tr. at 167. One was on Frankford Avenue and the other was on Ann Street. Tr. at 49, 178.

4. Clair and Mildred Sours own the building in which Washbasket is located; the building houses two apartments. Tr. at 169.

5. Plaintiff Cathy Walker ("Walker") lived in the second-floor apartment for several months during two different time periods when she also worked at Washbasket. Tr. at 24-25, 70.

6. Walker was one of many people who lived above the

laundromat and worked at Washbasket over the years. Tr. at 22, 171.

7. Washbasket was equipped with Maytag washing machines and dryers purchased by Clair Sours from Equipment Marketers in Cherry Hill, New Jersey. Tr. at 179.

8. Supplies for Washbasket were purchased locally. Tr. at 169.

9. The mop, bucket and broom used by Walker to clean Washbasket were provided by defendants. Tr. at 32-34. The rags used to clean the laundromat usually came from the Lost and Found on the premises. Tr. at 34.

10. Trash bags for the laundromat's trash were provided by defendants. Tr. at 39.

11. Walker worked part-time at the Sours' laundromat at 23rd and Spruce Streets during the summer of 1996. Tr. at 18-19. She was paid \$10 by Thomas Sours for each 3:00 p.m. to 11:00 p.m. shift. Tr. at 19.

12. Walker worked at Washbasket part-time from April, 1996 until October 1, 1997. Tr. at 14-15, 18. Herbert (Bud) Speier ("Speier"), a friend of Clair Sours, who also worked at Washbasket, paid her \$15.00 per shift. Tr. at 18, 84. She worked three days a week, from 6:00 p.m. to 11:00 p.m.. Tr. at 15.

13. On October 1, 1997, Walker replaced Speier and started

working full-time at Washbasket. Tr. at 22, 205.

14. Walker worked at Washbasket from 7:00 a.m. to 11:00 p.m., seven days a week; Clair Sours' required Walker to call him at 7:00 a.m. to let him know she had opened the laundromat and again at 11:00 p.m. to let him know she had closed the laundromat. Tr. at 30, 212.

15. Walker worked through the day, leaving the laundromat unattended only for 5 to 10 minutes at a time to order food, pick up food, or use the bathroom in her upstairs apartment. Tr. at 44, 50, 51.

16. Walker did not keep a record of her hours; Clair Sours never asked her to do so. Tr. at 64, 97.

17. Clair Sours did not keep a record of Walker's hours either. Tr. at 177.

18. In addition to opening and closing the laundromat, at Clair Sours' direction, Walker kept the premises clean and helped customers. Tr. at 93-94. Walker refunded customers' money when machines did not work; she kept records of the money she refunded and Thomas Sours reimbursed her. Tr. at 41-42, 194, 198. Walker would tape down the lid of a broken machine and attach a sign stating that it was "out of order." Tr. at 41. She called Clair Sours to let him know when a machine needed repair; Thomas Sours came to Washbasket regularly on Tuesday, Thursday and Saturday or Sunday nights, Tr. at 29, 86, 197, and she would let him know

which machine needed repair and why. Tr. at 47-48. Walker also enforced Clair Sours' rule that the laundromat's change machine was for use by customers only. Tr. at 45. She also removed customers' clothes from washers and dryers when the cycle was complete to allow waiting customers to use the machines. Tr. at 155-56.

19. Walker took out the laundromat's trash on Wednesdays. Tr. at 40.

20. A sign in the window of the laundromat stated that drop-off laundry service was available; customers could drop off dirty laundry and it would be washed, dried, folded, and retained until the customer returned to pay and reclaim it. Tr. at 53.

21. Walker never reported her income from drop-off laundry to Clair Sours. Tr. at 50, 204.

22. Walker, in providing drop-off laundry services for customers, used Washbasket's washers and dryers. Tr. at 89.

23. The Sours profitted from the money Walker used to operate the machines when doing drop-off laundry.

24. Walker provided her own detergent, bleach and dryer sheets for use in doing drop-off laundry; these products were purchased by her at a local "dollar store." Tr. at 34-35, 39, 88.

25. Clair Sours told Walker that if she needed time off, it was her responsibility to hire a substitute and it was her

responsibility to pay that person. Tr. at 50.

26. Four to six weeks after she started working full-time at Washbasket, Walker began to hire replacements for part of certain days. Tr. at 61.

27. In December, 1997, a couple worked the 6:00 p.m. to 11:00 p.m. shift for her on Fridays; she paid them \$15 per shift and left one or two drop-off laundry jobs for them to do. Tr. at 61.

28. Steve Morris, Walker's roommate for two months, substituted for Walker on an unpaid basis on Sunday evenings in November and December, 1997. Tr. at 132.

29. In January and part of February, 1998, Speier sometimes worked for Walker during the 6:00 to 11:00 p.m. Friday shift at \$15 a shift, plus income from drop-off jobs she left for him to do. Tr. at 62, 63.

30. John Hettich, a friend of Walker and Speier, covered for Walker for three hours everyday beginning in late February, 1998 through mid-May, 1998; Walker paid him \$10 a day. Tr. at 62-63.

31. Speier's ex-wife and ex-sister-in-law also substituted for Walker once or twice. Tr. at 63.

32. Walker left her job at Washbasket and moved to New York on May 10, 1998. Tr. at 64.

33. John Knapp ("Knapp") replaced Walker at Washbasket.

Tr. at 175.

34. Knapp had a key to the laundromat; he opened and closed the facility, did drop-off laundry, and sometimes called Clair Sours if a problem arose. Tr. at 175-76.

35. Knapp was replaced by Michael and Priscilla Moore (the "Moorees"). They had keys to the laundromat, opened and closed it and provided drop-off service there. Tr. at 176. The Moorees lived in the apartment above the laundromat when they worked at Washbasket. Tr. at 176.

36. Walker returned to Philadelphia and started working full-time at Washbasket again on December 1, 1998. Tr. at 69.

37. Walker's duties during this second period of employment were the same as when she had worked there previously.

38. Walker was sick with an ear infection for a few days in February, 1999; at this time, Clair Sours told her to pay Kenny, a replacement he found for her, at the rate of \$10 per shift, plus car fare. Tr. at 71.

39. Walker called Clair Sours a few other times to arrange for Kenny to substitute for her. Tr. at 72.

40. Speier also substituted for Walker on the Friday 6:00 p.m. to 11:00 p.m. shift four times during her second period of employment; she paid him \$15.00 a shift. Tr. at 95-96.

41. With Clair Sours' permission, in addition to doing drop-off laundry, Walker started doing drop-off ironing for

customers. Tr. at 73.

42. Walker used her own iron and ironing board to do drop-off ironing for customers and put a sign in the window advertising her services. Tr. at 88.

43. She kept all income from her ironing services, \$100.00 for twelve separate jobs. Tr. at 88.

44. Walker moved out of the apartment above the laundromat and stopped working there on April 14, 1999. Tr. at 74.

45. Speier replaced Walker at Washbasket; he moved into the upstairs apartment four months thereafter. Tr. at 217-218.

46. Speier had lived above the laundromat for a period of years before this time; during both periods, he opened and closed Washbasket, did drop-off laundry, and called Clair Sours if a problem arose. Tr. at 172-173; Speier Depo. at 28.

47. When Walker signed the lease for her first tenancy on September 23, 1997, Clair Sours told her to ignore the provision stating that the rent was \$600 per month; he told her rent would be \$50 per week. Tr. at 24-25.

48. Walker paid \$50 per week in cash to Thomas Sours during her first tenancy; she paid Thomas Sours when he came by the laundromat. Tr. at 26, 27, 195.

49. In November and December, 1997, Steve Morris ("Morris") lived with Walker in the apartment above Washbasket; he paid \$500

per month in rent. Tr. at 26. During those two months, Walker paid no rent. Tr. at 26-27.

50. In late 1998, after Walker returned to Philadelphia from New York, she saw a sign in the window of Washbasket that a couple was wanted to run the laundromat in exchange for a rent-free apartment. Tr. at 68.

51. Walker signed another lease for the apartment on November 12, 1998 and moved in on December 1, 1998; she received keys to the laundromat on the same day. Tr. at 69, 70.

52. During this second tenancy from December 1, 1998 through mid-April, 1999, Walker paid no rent. Tr. at 70.

53. Walker received no hourly wages from defendants for her full-time work at Washbasket. Tr. at 57.

54. Walker's income from her full-time work at the laundromat was limited to earnings from drop-off laundry and ironing and the rental discount. Tr. at 57.

55. Walker did not record her earnings during her first period of employment at Washbasket; Clair Sours never asked her to keep records during either employment period. Tr. at 64. Walker did keep records of her income from drop-off laundry and ironing starting in December, 1999, during her second period of employment. Exh. P-1. Her records reflected earnings of \$2563.00 over 56 days. See Ex. P-1.

56. Walker charged \$8.00 to wash the first load of laundry

and \$3.00 for each additional load, plus \$1.00 if she used her own detergent, bleach or dryer sheets. Tr. at 53, 55-56. The cost to Walker for a load of laundry was \$1.25 for washing, approximately \$.75 for drying, plus an unspecified amount in supplies such as detergent, dryer sheets and bleach. Tr. at 56.

57. The number of drop-off customers each week varied; her income from drop-offs varied accordingly. Tr. at 52.

58. Walker never reported any income she received while working at Washbasket on any federal income tax returns during the relevant years. Tr. at 87, 112.

59. During her second period of employment at Washbasket, on January 27, 1999, at the suggestion of a customer, Walker called the Wage and Hour Board of the Department of Labor ("DOL") and lodged a complaint against defendants. Tr. at 73-74.

60. By letter dated July 8, 1999, the DOL informed Clair Sours that it had scheduled an appointment with him at the Philadelphia office for July 15, 1999; Clair Sours was instructed to bring Walker's payroll and time records for the past two years and other employment information. Ex. P-8.

61. After receiving this letter from the DOL, Clair Sours contacted his accountant who informed him the Sours did not owe Walker any money. Tr. at 2/34.

62. Defendants did not keep wage records for Walker or for any others who worked at Washbasket. Tr. at 177.

63. In the summer of 1998, when Walker was living in New York, she worked at a laundromat and received the minimum wage. Tr. at 104.

64. Starting in June, 1999, Walker worked at another laundromat, The Washing Well; she was paid the minimum wage. Tr. at 76-77, 111.

65. After that, Walker worked as a waitress at a diner for a month where she earned \$2.00 an hour, plus tips. Tr. at 77, 111.

66. Walker went back to work at The Washing Well in the summer of 1999; she worked five days a week for seven hours each day and was paid the minimum wage. Tr. at 77.

67. After her summer at The Washing Well, Walker worked as a parking garage attendant from December, 1999 through March, 2000; she was paid \$150.00 a week. Tr. at 77-78, 111.

68. Walker then worked at a restaurant for a couple of weeks where she earned approximately \$250.00 a week in wages and tips for four days' work. Tr. at 78, 79.

69. Starting in late May, 2000 through January 26, 2001, Walker worked as a barmaid at \$35.00 a shift, plus tips; this would average about \$300.00 a week. Tr. at 78.

70. Since January 26, 2001, Walker has worked as a barmaid at another location four days a week. Tr. at 78.

71. Walker lied when she wrote to her workers' compensation

lawyer that she had been out of work for a year when in fact she had been working at Washbasket for part of that time; Walker admitted the lie. Tr. at 108.

72. Defendants also offered evidence that Walker failed to file tax returns during the relevant years; in 1999 she only reported income from one of her jobs. Tr. at 112.

73. Nonetheless, Walker's testimony was, for the most part, credible. Many of the other witnesses' testimony was in accord with Walker's.

74. Clair Sours' testimony that Walker paid \$600.00 a month in rent during both her tenancies is unbelievable; his son, Thomas Sours, testified that he collected \$50.00 a week from her during her first tenancy and that Clair Sours handled the rent during her second tenancy. Tr. at 195. The rent receipts from her second tenancy were not created contemporaneously, but were made after-the-fact, prior to Clair Sours' deposition in this action.

75. The most credible testimony from Clair Sours was that he did not believe he could pay for attendants without diminishing the profits of his business. Tr. at 2/31.

76. Clair Sours' testimony was largely incredible because it was unsupported by other witnesses or the established facts. His demeanor also suggested a lack of credibility. While it is not absolutely necessary that a coin-operated, self-service

laundromat providing drop-off laundry service employ an attendant during all hours of operation, it is unlikely that Sours chose to leave the establishment unattended.

77. Steve Morris was subpoenaed to testify. Tr. at 129. His testimony largely corroborated Walker's testimony.

78. John Hettich ("Hettich") was also subpoenaed to testify. He threatened Walker on his way to the witness stand, Tr. at 137-38, was uncooperative, and admitted to once being romantically involved with Speier, Tr. at 139. Clair Sours admitted to being friendly with Hettich. Tr. at 2/24. No weight was given to the testimony of Hettich.

79. Marcie Turney and Anne Harney both worked in restaurants on the same block as Washbasket, walked by the laundromat several times a day and did their laundry there during the relevant time periods. Their testimony was very credible and supported Walker's contention that she was present full-time at Washbasket. Tr. at 145, 148, 153, 157.

80. Carolyn Reynolds, Speier's ex-sister-in-law, was not a credible witness. She contended she had never worked at Washbasket. This contention was later rebutted by testimony by a witness who had been at the laundromat the week prior to trial, spoke with her both weekend days and left his drop-off laundry with her after she quoted a price. Tr. at 2/43. Clair Sours also admitted being friendly with her. Tr. at 2/24. Her

testimony was given no weight.

81. Bud Speier, who testified by deposition, was very uncooperative and refused to answer many of the questions asked. He nevertheless provided some testimony corroborating Walker's testimony.

82. Thomas Sours was a generally credible witness. His testimony regarding the \$50.00 a week rent collected from Walker during her first tenancy and the days he appeared at the laundromat was in accord with Walker's testimony. Tr. at 195, 197.

83. Jordan Barnett is a third-year law student at University of Pennsylvania School of Law who was hired by plaintiff's counsel in February, 2001 to investigate the laundromat. Tr. at 2/43. His credible testimony impeached that of Carolyn Reynolds, Clair Sours and John Hettich.

II Discussion

A. Governing Law

The Fair Labor Standards Act ("FLSA") requires certain employers to pay a minimum wage to their employees. See 29 U.S.C.A. §206. Employers who are governed by the FLSA are those whose employees "in any workweek [are] engaged in commerce or in the production of goods for commerce, or [are] employed in an enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C.A. §206(a) (West 1998 & Supp. 2000). The

Act also mandates a maximum forty-hour workweek "unless [the] employee receives compensation for [her] employment in excess of [forty hours] at a rate not less than one and one-half times the regular rate." 29 U.S.C.A. §207(a)(1) (West 1998 & Supp. 2000). Additionally, the FLSA requires employers to keep wage and hour records, 29 U.S.C.A. §211(c), and creates a right of action for covered employees, 29 U.S.C.A. §216(b).

Pennsylvania's Minimum Wage Act ("MWA") requires covered employers to pay their employees minimum wages and overtime wages, 43 P.S. §333.104, keep records of hours worked and wages paid, 43 P.S. §333.108, and creates a right of action for covered employees, 43 P.S. §333.113.

B. "Enterprise Engaged In Commerce"

1. **Enterprise**

To be an "enterprise" under the FLSA,² the business must have had, in the relevant annual periods, at least two or more employees regularly and recurrently engaged in its activities. See 29 C.F.R. §779.238. Two or more regular employees may be employed at different locations within the enterprise. See 29 C.F.R. §779.204(b); 29 C.F.R. §779.207. It is not necessary that the employees work the same hours. See Ford v. Sharp, 758 F.2d 1018, 1020 (5th Cir. 1985)(FLSA applied to coin-operated laundry

²State law has no "enterprise engaged in commerce" requirement.

that employed two regular employees who were on duty at different times).

a. 1997

When Walker started working full-time at Washbasket on October 1, 1997, she replaced Speier, for whom she had regularly substituted over the past year and a half. Speier opened and closed Washbasket, did drop-off laundry, called Clair Sours if there was problem, and lived above the laundromat. He swept and cleaned up spills and helped customers get refunds if coins were lost in a machine. Washbasket regularly and recurrently employed at least two employees during 1997; the defendants constituted an enterprise within the meaning of 29 C.F.R. §779.238 during 1997.

b. 1998

When Walker left Washbasket in May, 1998, she was replaced by John Knapp ("Knapp"). Knapp had a key to Washbasket, he opened and closed it, did drop-off laundry, and sometimes called Clair Sours if there was a problem. Knapp was replaced by Michael and Priscilla Moore ("the Moores") who lived above the laundromat, had keys to it and opened and closed it. Walker replaced the Moores in December, 1998. Washbasket regularly and recurrently employed at least four employees during 1998; the defendants constituted an enterprise within the meaning of 29 C.F.R. §779.238 during 1998.

c. 1999

When Walker left Washbasket for the second time in April, 1999, Speier replaced her. Washbasket regularly and recurrently employed at least two employees during 1999; the defendants constituted an enterprise within the meaning of 29 C.F.R. §779.238 during 1999.

Defendants operated an "enterprise" within the meaning of the FLSA during the relevant time periods.

2. **Engaged in Commerce**

FLSA applies to enterprises that have employees: (1) engaged in commerce or in the production of goods for commerce; or (2) handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.³ See 29 U.S.C.A. §203(s)(1)(A)(i)(West 1998 & Supp. 2000); Radulescu v. Moldowan, 845 F. Supp. 1260, 1262 (N.D. Ill. 1994)(enterprise using and handling supplies manufactured outside

³Prior to 1966, laundry establishments were specifically exempted from coverage under the FLSA. See National Automatic Laundry and Cleaning Council v. Schultz, 443 F.2d 689, 692 (D.C. Cir. 1971). In 1966, the Act was amended to include enterprises "engaged in laundering, cleaning, or repairing clothes or fabrics." Id. Coin-operated laundry establishments were included in this amendment and were covered by the FLSA. Id. at 707. In 1989, the "enterprise" test was totally revised, requiring an annual gross volume of sales in excess of \$500,000.00. See Pub. L. 101-157 §3(a). However, Congress included a "preservation of coverage" provision extending coverage to any enterprise that was subject to the minimum wage and overtime provisions prior to the passage of the amendments (March 31, 1990). Because defendants operated their coin-operated laundry enterprise as of that date, it is still covered under the FLSA subsequent to the 1989 amendments under the "preservation of coverage" provision.

of the employer's home state and shipped into the state was covered by the FLSA). "[L]ocal business activities fall within the reach of the FLSA when an enterprise employs workers who handle goods or materials that have moved or been produced in interstate commerce." Id. at 1264. See also Dole v. Bishop, 740 F. Supp. 1221, 1225 (S.D. Miss. 1990)(when waitresses, cooks and busboys of two restaurants regularly handled food items and cleaning supplies shipped from outside the restaurants' home state, the restaurant was engaged in interstate commerce).

Businesses using materials that have been manufactured out of state and moved in interstate commerce have been deemed "enterprises engaged in commerce." See Marshall v. Brunner, 668 F.2d 748, 751-52 (3d Cir. 1983)(trash collecting firm using trucks, truck bodies, tires, batteries, and accessories, sixty-gallon containers, shovels, brooms, oil and gas manufactured out of state was an enterprise engaged in commerce). See also Brennan v. Dillion, 483 F.2d 1334, 1336 (10th Cir. 1973)(owner of three apartment complexes was an enterprise engaged in commerce because it used "paint, light bulbs, soap, and other supplies . . . manufactured outside of [its home state] and moved in commerce to get to [its] premises."); Wirtz v. Washeterias, S.A., 304 F. Supp. 624, 625 (D. Canal Zone 1968)(laundry on a military base using a substantial amount of soaps, detergents, bleaches and other goods from outside the Canal Zone was an enterprise engaged

in commerce); Goldberg v. Furman Beauty Supply, 300 F.2d 16, 19 (3d Cir. 1962)(supplies transmitted as part of a service are considered resold to the ultimate consumer). "Congress intended to extend the [FLSA] to firms . . . which use materials that have been moved in or produced in commerce." Marshall, 668 F.2d at 752.

Washbasket is a self-service, coin-operated laundry; it also provides service to customers who drop-off laundry to be washed, dried and folded for a fee. The washers and dryers at Washbasket, manufactured by Maytag and purchased by Clair Sours at Equipment Marketers in Cherry Hill, New Jersey, moved in interstate commerce. Supplies for all three laundromats were purchased in bulk from retailers in the Philadelphia area. There was no evidence of the place of manufacture of the various supplies or brand(s) of detergent or cleaning materials provided by the Sours at Washbasket.

Walker offered exhibits of bleach, detergent, dryer sheets, and trash bags she testified were similar to what she used at the laundromat. The bleach, detergent, and dryer sheets all had moved in interstate commerce,⁴ but were purchased by Walker a

⁴Top Crest Lemon Fresh Bleach was distributed by Topco Assoc., Inc., in Skokie, Illinois. Exh. P-22. Xtra laundry detergent is a product of USA Detergents, Inc., based in New Brunswick, New Jersey. Exh. P-23. Bright Water dryer sheets are manufactured by Kleen Brite Labs, Inc. in Brockport, New York. Exh. P-24.

week prior to the trial. The trash bags also moved in interstate commerce,⁵ but were purchased by a third party the day before trial. There was no evidence that these products moved in interstate commerce during the relevant time period but such evidence would have been irrelevant to the extent the materials were purchased for Walker's drop-off business. It is the employer's enterprise that must be engaged in commerce.

The purpose of the FLSA is remedial in nature. Congress enacted the law to correct "conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C.A. §202 (West 1998 & Supp. 2000). In view of this purpose, Walker's use of washing machines and dryers that moved in interstate commerce is enough to satisfy the "engaged in commerce" prong.

Washbasket was an "enterprise engaged in commerce" during the relevant time periods.

C. Employee Status

1. **FLSA**

The FLSA applies to "employees" who are "employed in an enterprise engaged in commerce" 29 U.S.C.A. §206, §207 (West 1998 & Supp. 2000). Whether Walker is an "employee" within

⁵Hefty CinchSak 30 gallon trash bags were manufactured by Pactiv Corporation in Lake Forest, Illinois. Exh. P-25.

the meaning of the Act is in dispute.

The FLSA defines an "employee" as "any individual employed by an employer." 29 U.S.C.A. §203(e)(1) (West 1998 & Supp. 2000). An "employer" is "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C.A. §203(d) (West 1998 & Supp. 2000). The broadest definition of "employee" is applied by the FLSA. See Donovan v. DialAmerica Marketing, Inc., 757 F.2d 1376, 1382 (3d Cir. 1985)(home researchers who signed "Independent Contractor's Agreement" were "employees" under the FLSA).

The court looks to the economic realities of the relationship in determining employee status under the FLSA. See Rutherford Food Corp. v. McComb, 331 U.S. 722, 723 (1947); Martin v. Selker Bros., Inc., 949 F.2d 1286, 1293 (3d Cir. 1991). There are at least six relevant factors to be examined: (1) the worker's degree of control over work performed; (2) the worker's opportunity for profit or loss; (3) the worker's investment in equipment and materials; (4) whether a special skill is required to perform the worker's function; (5) the permanency of the working relationship; and (6) whether the service rendered by the worker is integral to the putative employer's business. See Selker Bros., 949 F.2d at 1286; Donovan, 757 F.2d at 1382. No one factor controls; the circumstances as a whole must be considered and "employees are those who as a matter of economic

reality are dependent upon the business to which they render service." Bartels v. Birmingham, 332 U.S. 126, 130 (1947) (considering the employee/independent contractor distinction in the context of the Social Security Act); Rutherford, 331 U.S. at 723 (applying the Bartels analysis under the FLSA); Donovan, 757 F.2d at 1382.

In Selker Bros., gasoline station operators received a commission of three cents on every gallon of gasoline sold and ten cents per gallon of kerosene. Martin v. Selker Bros., 949 F.2d 1286, 1290 (3d Cir. 1991). Although they had side businesses, the bulk of the operators' income came from the sale of gasoline. Id. at 1294. The operators reported daily sales to the defendant, but did not set the hours of operation or make hiring and pay decisions. Id. They had no investment in the stations and their work required no special skill. Id. at 1295. They worked exclusively for defendant who was dependent upon their work for the operation of the stations. Id. at 1295-96. The operators were employees within in the meaning of the FLSA. Id. at 1296.

In Usery v. Pilgrim Equipment Co., Inc., 527 F.2d 1308, 1312-1315 (5th Cir. 1976), 60 operators of laundry pick-up stations were deemed "employees" under the Act because they were: (1) largely controlled by their employer who handled substantially all advertising, set prices and required operators

to work exclusively for it; (2) without opportunity for profit or loss; (3) dependent upon their employer for continued employment; (4) without highly-developed skills; and (5) among the class of persons intended to be covered under the Act. In addition, they had risked no capital investment.

In Brennan v. Partida, 492 F.2d 707, 709 (5th Cir. 1974), laundromat workers required to open and close the laundromat and clean the premises were considered "employees" under the FLSA. The plaintiffs lived in the rear of the store and received vending machine profits and a percentage of receipts from a dry cleaning station they operated on the premises. Id. The court found the plaintiffs: (1) did not provide their own equipment; (2) bore no operational expenses; (3) were not expected to exercise any business judgment; and (4) performed routine and uncomplicated work. Id.

Here, Walker had no control over her schedule. She opened Washbasket at 7:00 a.m. and closed it at 11:00 p.m., hours set by Clair Sours; she was required to call Clair Sours to verify that she had opened and closed. In addition to talking to Clair Sours twice a day, she was in contact with the Sours' son, Thomas, three times a week when he came to the laundromat to collect the coins, service the change machine, take care of additional laundromat business, and collect Walker's rent. She stayed at the laundromat between opening and closing, except for 5 to 10

minute periods to get food or use the bathroom in her upstairs apartment. If she needed time off, she had to hire someone to cover for her. She had some control over the performance of drop-off services and her earnings from this activity. Although a sign in the window of Washbsket stated that drop-off laundry service was available, defendants never told her how much to charge for doing drop-off laundry or ironing.⁶ She never reported to the Sours how many drop-offs there were or the income she earned from providing these services.

Walker's opportunity for profit or loss was limited to the number of drop-off customers who engaged her for laundry or ironing services. Walker paid the fee for use of the laundry equipment for the drop-off customers. She took no portion of the money spent by self-service laundromat customers for use of the washers, dryers and the vending machines (estimated by Clair Sours at approximately \$1500.00 per week).

Her investment in materials was limited to detergent, bleach and dryer sheets, purchased by her at a "dollar store," and the \$2.00 in coins required to wash and dry each load of drop-off laundry. She also used her own iron and ironing board to do

⁶Walker contends the price for drop-off laundry was set before she started, but it is unclear by whom the price was set. She charged the same price as did Speier, Speier Depo. at 20, but did not prove Speier was an agent of defendants. She has not shown that the defendants controlled her income from drop-off laundry.

drop-off ironing. She used the laundromat's machines and folding tables when washing, drying and folding customers' clothes. Her drop-off laundry service was an asset to defendants' business; they advertised that such service was available at Washbasket and they profited from the coins Walker inserted into the machines to wash and dry customers' clothes. It is likely at least some customers patronized Washbasket because there was drop-off service, but the primary operation of the laundromat was a coin-operated self-service facility with incidental drop-off laundry service. See Selker Bros., 949 F.2d at 1295.

No special skill is required for laundry or ironing. Nor is special skill required to perform other tasks Walker performed such as watching the facility, making change for customers, refunding change lost in machines, placing out-of-order signs on broken machines, sweeping, mopping, and emptying the trash.

Walker worked at Washbasket for relatively short periods of time, but when she worked, she was at the landromat seven days a week for up to 16 hours a day. Walker's services were important to the business. She opened and closed the laundromat; it benefitted from supervision; customers needed her assistance from time to time; and there was a sign in the window stating that drop-off laundry service was available because she was willing to do it. While the operation of the enterprise may not have been labor-intensive, some oversight and customer assistance was

helpful, if not absolutely necessary. An attendant on-site washing, drying and folding when requested by customers was an asset to the enterprise and defendants' way of doing business.

Walker was dependent upon her employment at Washbasket for her livelihood. Defendants were dependent upon her daily activities at the laundromat to keep it profitable. Walker was an "employee" within the meaning of the FLSA; the Sours were her employers.

Because plaintiff has proven that: (1) Washbasket was an "enterprise engaged in commerce" during the relevant time periods; and (2) Walker was an "employee" within the meaning of the FLSA, the court has subject matter jurisdiction over this action.

2. State Law

The Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1 et seq., provides no definition of "employee." Where a statute does not supply a definition for a term, rules of statutory construction apply. See Frank Burns, Inc. v. Interdigital Comms. Corp., 704 A.2d 678, 680 (Pa. Super. Ct. 1997)(a corporation is not an "employee" under the WPCL). Under the statutory rules of construction, "technical words are to be construed according to their 'peculiar and appropriate meaning.'" Id. The Pennsylvania Minimum Wage Act, 43 P.S. §333.101 et seq., under which Walker also seeks relief, defines an employee as "any

individual employed by an employer." 43 P.S. §333.103(h) (West 1992 & Supp. 2000). An employer under the WCA "includes any individual [or] partnership . . . acting directly or indirectly, in the interest of an employer in relation to any employee." 43 P.S. §333.103(g) (West 1992 & Supp. 2000). Like the FLSA definition of "employee," the state statutes do not provide significant guidance.

The "general meaning" of the term "employee" should be applied. See Raykhman v. Digital Elevator Co., Civ. A. No. 93-1347, 1993 WL 370988, *6 (E.D. Pa. Aug. 30, 1993) (determination whether an individual is an "employee" or an "owner" is a question of fact for a jury). When distinguishing between "employee" and "independent contractor," several factors may be considered: (1) control over the work; (2) responsibility for the results; (3) terms of the agreement between the parties; (4) skill required for job performance; (5) whether the business in which the worker is engaged is a distinct occupation; (6) party supplying the tools; (7) whether payment is hourly or by the job done; (8) whether the work is part of the regular business of the employer; and (9) right to terminate employment. See Universal Am-Can, Ltd. v. Workers' Compensation Appeal Bd., 762 A.2d 328, 333 (Pa. 2000) (workers' compensation claimant was not an employee of petitioner); Hammermill Paper Co. v. Rust Engineering Co., 243 A.2d 389, 392 (Pa. 1968).

Control over the work and the manner in which the work is to be performed are the most significant factors in determining employee status. See Universal Am-Can, 762 A.2d at 333. With regard to the control issue, it is the right to control, rather than the exercise of the right that is significant. Id.

Clair Sours set Washbasket's hours of operation; Walker was required to open at 7:00 a.m., close at 11:00 p.m., call him at opening and closing, stay on-site during hours of operation, and hire a substitute should she need some relief.

A sign in the window of the laundromat stated that drop-off laundry services were available but the drop-off business was Walker's; she did not report the number of drop-offs or account to the Sours for the income derived therefrom. She kept all profits from that aspect of her business but the Sours received coins for washing (\$1.25) and drying (\$.75) each load.

The agreement between Walker and Clair Sours during the first term of her employment was that she could live in the apartment upstairs from Washbasket at a reduced rent of \$50.00 per week. During her second term of employment, she received the apartment free of charge. Her income otherwise consisted solely of profits from the drop-off laundry and ironing businesses. There was no contract of employment designating her as employee or independent contractor.

Little skill is required in operating a coin-operated

laundry or doing laundry and ironing.

Walker's role at the laundromat was not a distinct occupation within the operation. She was the facility's attendant, important to its operation; her services added to the laundromat's profits.

Washbasket was equipped with washing and drying machines, as well as folding areas. A mop, bucket and broom were provided for clean-up. Walker provided her own soap, bleach, dryer sheets and coins for drop-off laundry, but she used the facility's machines.

She received neither hourly nor per job payment from the Sours; instead, she received a rent abatement (or free rent) and the profits from drop-off laundry and ironing.

Her work was part of the regular business of Washbasket.

Walker's employment was not governed by contract; defendants had the right to fire her at any time. Walker's employment ended both times when she chose to leave.

Walker qualifies as an "employee" under Pennsylvania law.

D. Statute of Limitations

The statute of limitations in a FLSA action is two years unless the cause of action arises out of a willful violation of the Act, in which case, the limitations period is three years.

29 U.S.C.A §255(a) (West 1998 & Supp. 2000). See also McLaughlin

v. Richland Shoe Co., 486 U.S. 128, 129 (1988); Selker Bros., 949 F.2d at 1296. The statute of limitations for claims arising under the WPCL or MWA is three years. 43 P.S. §260.9a(g) (West 1992 & Supp. 2000).

Walker claims to have been underpaid, in violation of sections 206 and 207 of the FLSA and under state law, from October 1, 1997 through May 10, 1998 and again from December 1, 1998 through April 14, 1999.

We find no violation of section 206, but we do find a violation of section 207. This action was filed on October 6, 1999. At the very least, the two-year FLSA statute of limitations allows her to proceed on her section 207 overtime claims from October 6, 1997; she would be precluded from recovering any damages under federal law for violation of the overtime wages provision incurred from October 1 - October 5, 1997 unless the defendants' violations of the FLSA were willful.

A willful violation under the Act is when "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." McLaughlin, 486 U.S. at 133; Selker Bros., 949 F.2d at 1296. See also Brock v. Claridge Hotel and Casino, 846 F.2d 180, 188 (3d Cir. 1988) ("willfulness requires a showing of intent or reckless disregard of the [FLSA], not simply knowledge that the Act was 'in the picture.'"). In her complaint, Walker alleges that "[a]t

all times relevant hereto, the defendants were aware of and showed a reckless disregard for whether plaintiff was an employee under the FLSA and the Wage Act." See Compl. at ¶32. Although Clair Sours admitted that hiring laundry attendants would make the operation of his laundromats less profitable, there was no evidence that he knew providing housing at below market value or free of charge in exchange for running Washbasket was prohibited by federal law if the value of the housing was less than minimum overtime wages. The rent abatement and money earned from doing drop-off laundry was some compensation, albeit below the required overtime wages. Plaintiff did not prove that defendants knew they were legally mandated to pay their employees wages for overtime beyond that or that they recklessly disregarded their legal obligation. Plaintiff may not recover past wages prior to October 6, 1997 under the FLSA; she may recover past wages dating from October 1 to October 5, 1997 under Pennsylvania law.

E. Notices

Employers covered by the FLSA's minimum wage provisions are required to post a notice explaining the Act in conspicuous places within the place of business. See 29 C.F.R. §516.4. Employers subject to the Minimum Wage Act must "keep a summary of this act and any regulations issued thereunder applicable to [it] in a conspicuous place where employe[e]s normally pass and can read it." 43 P.S. §333.108 (West 1992 & Supp. 2000). The

penalty for failure to post such notices is tolling of the limitations period. See Bonham v. Dresser Indus., Inc., 569 F.2d 187, 193 (3d Cir. 1978)(failure to post ADEA notice tolled the running of the limitations period); Friedrich v. U.S. Computer Servs., Inc., 833 F. Supp. 470, 478 (E.D. Pa. 1993)(failure to post notices required under the MWA resulting in tolling of limitations period); Kamens v. Summit Stainless, Inc., 586 F. Supp. 324, 328 (E.D. Pa. 1984)(failure to post notice as required under the FLSA resulted in tolling of limitations period).

Defendants were adamant that they had no employees. It logically follows that it is unlikely that they posted any such notices, but no evidence was presented that such notices were not posted on Washbasket's premises. Walker is not entitled to a tolling of the two year limitations period on her federal claims.

F. Records

The FLSA requires employers to "make, keep, and preserve such records of the persons employed by [it] and of the wages, hours, and other conditions and practices of employment maintained by [it]" 29 U.S.C.A. §211(c) (West 1998 & Supp. 2000). See also 29 C.F.R. §516.2. Pennsylvania law requires an employer to keep records of hours worked by each employee and the wages paid. See 43 P.S. §333.108 (West 1992 & Supp. 2000).

Defendants contend Walker was never an employee; they never

kept any records of her hours or wages paid. Violation of these provisions does not result in a penalty per se, but an employer's failure to produce evidence of the hours worked and wages paid to an employee results in the court having to approximate damages. See Selker Bros., 949 F.2d 1286, 1297 (3d Cir. 1991). When an employer fails to keep the required records

an employee has carried out [her] burden if [s]he proves that [s]he has in fact performed work for which the [s]he was improperly compensated and if [s]he produces sufficient evidence to show that amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687-88 (1946).

Defendants' claim that they did not have laundry attendants and that Washbasket ran unattended is not credible. Absent proof of hours actually worked by Walker or of any wages paid (other than rent abatement), the court will approximate the back wages owed to Walker, the income she earned from doing drop-off laundry and ironing, and deduct the housing provided free of charge or at below-market rent.

G. Retaliatory Discharge

Under the FLSA, it is "unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted any

proceeding under or related to this chapter" 29 U.S.C.A. §215(a) (West 1998 & Supp. 2000). Under Pennsylvania law,

[a]ny employer . . . who discharges or in any other manner discriminates against any employe[e] because such employe[e] has testified or is about to testify before the secretary or his representative in any investigation or proceeding under or related to this act, or because such employer believes that said employe[e] may so testify shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000)

43 P.S. §333.112(a) (West 1992 & Supp. 2000).

To determine retaliatory discharge under the FLSA, the McDonnell Douglas⁷ burden-shifting analysis applies. See Harris v. Mercy Health Corp., No. Civ. A. 97-7802, 2000 WL 1130098, *6 (E.D. Pa. Aug. 9, 2000). Walker must show: (1) she was engaged in protected activity; (2) her employment at Washbasket was terminated contemporaneously with this activity; and (3) there exists a causal link between (1) and (2). See id. Defendants must then offer a legitimate reason for the termination of her employment. See id. If defendants meet this burden, Walker must then show that defendants' reason is pretextual. See id.

Walker's lodging a complaint with the DOL is a protected activity. The complaint was lodged on January 27, 1999 by telephone. Walker claims she notified Clair Sours she was moving out of the apartment in April, 1999 and asked him at that time if she could keep the morning shift at the laundromat. She says

⁷McDonnell Douglas Corp. v. Green, 411 U.S. 792, 805 (1973).

Clair Sours told her he had an appointment with the DOL two weeks from then and would let her know after that if she could keep that shift; she never heard from him again.

A letter from the DOL to Clair Sours, dated July 8, 1999, informed him of an appointment at the Philadelphia office on July 15, 1999, to discuss Walker's complaint. Walker presented no evidence to contradict the inference that Clair Sours did not know of her DOL complaint until that time. She has failed to make out a prima facie case of retaliatory discharge.

H. Minimum Wage

Under the FLSA, an employer must "pay to each of [its] employees who in any workweek is . . . employed in an enterprise engaged in commerce . . . , wages . . . not less than \$5.15 an hour beginning on September 1, 1997." 29 U.S.C.A. §206(a)(1) (West 1998 & Supp. 2000). "Any employer who violates the [minimum wage] provisions of section 206 . . . of this title shall be liable to the employee . . . affected in the amount of their unpaid minimum wages" 29 U.S.C.A. §216(b) (West 1998 & Supp. 2000). Plaintiff contends the minimum wage applicable in 1990 (\$4.25 per hour) applies because of 1990 amendments to Act. The court will not award plaintiff more than she demands.

Under the Pennsylvania Minimum Wage Act, minimum wage is to be "increased by the same amounts and effective the same date as

the increases under the [FLSA]." 43 P.S. §104(a.1). An award of unpaid wages is also an available remedy for violations of the MWA. See 43 P.S. §260.9a, §260.10 (West 1992 & Supp. 2000). The applicable minimum wage under Pennsylvania law is \$5.15.

Walker was paid no hourly wage. Defendants customarily had the attendants at Washbasket live in the second floor apartment above Washbasket. The market value of the apartment was \$600.00 per month. Walker received a \$400.00 per month rent abatement during her first tenancy for October 1, 1997 and January 1, 1998 through May, 1998. She paid no rent during November and December 1997 when Steve Morris lived with her; she also paid no rent during her second tenancy from December 1, 1998 to April 14, 1999.

Providing housing at no or reduced rent constitutes "wages" under the FLSA. 29 U.S.C.A. §203(m) (West 1998 & Supp. 2000)("'[w]age' paid to any employee includes the reasonable cost . . . to the employer or furnishing such employee with . . . lodging . . . if such . . . lodging . . . [is] customarily furnished by such employer to his employees."). Even if Walker only worked a 40 hour week, her wages in the form of rent reduction or abatement fall below the minimum wage during both tenancy periods (\$170.00 per week under the FLSA and \$206.00 under Pennsylvania law). Based on a 108.5 hour workweek (15.5 hours a day, seven days a week), the rent abatement of \$400.00

per month during her first tenancy is the equivalent of \$92.31 per week except for November and December 1997 when she received a rebate of \$600.000 per month or \$138.46 per week⁸ and the free rent during her second tenancy is the equivalent of \$138.46 per week.⁹

Also included in the calculation of wages is the income Walker received from her drop-off laundry and ironing services. Walker failed to produce any records of her income from drop-off laundry during her first period of employment or adequate records of her earnings from her second period of employment. Based on undated records starting in December, 1999, reflecting 56 days of drop-off laundry and ironing income, Walker grossed \$2563.00 for that period.¹⁰ She paid defendants \$1.25 per load of wash and at least \$.75 to dry a load. Over the 56 days accounted for, she did 627 loads of laundry, with a net income of \$1309.00. She also did twelve drop-off ironing jobs, earning a total of

⁸See Appendix A; see also ¶49.

⁹See Appendix C.

¹⁰Although the total amount recorded is \$3104.00, the court deducted jobs that were not crossed off; Walker testified she crossed out the customer's name and the amount due when the customer came to pick up the laundry and paid her. Tr. at 37. In addition, the court did not factor in the jobs that had "Bud" written next to them; Walker testified that when "Bud" was written next to a name and price, it meant Speier did the job and collected the money. Tr. at 127. In addition, a few of the entries are blacked out; no income was calculated for those entries that were illegible.

\$100.00. This income is used to approximate the income to be applied toward the minimum wages she was owed by defendants (for drop-off laundry during the first period and drop-off laundry and ironing during the second period).

I. Overtime

Under both federal and state law, an employee working more than 40 hours in a given workweek must be paid one and a half times her regular hourly wages for all hours thereafter. See 29 U.S.C.A. §207(a)(1); 43 P.S. §333.104(c). Walker worked 15.5 hour days (7:00 a.m. to 11:00 p.m., minus approximately 30 minutes in short breaks), seven days a week, totaling 108.5 hours/week.¹¹ Walker is entitled to minimum wage for 40 hours each week and time and a half for the remaining 68.5 hours each week. Time and a half of \$4.25 under the FLSA is \$6.375 an hour and under Pennsylvania law, \$7.725 an hour is time and a half of \$5.15 an hour.

J. Liquidated Damages

1. **FLSA**

In addition to an award of unpaid minimum wages and unpaid

¹¹Even when Walker had others cover for her, she generally paid them for their time; they were not paid by defendants. She is entitled for compensation for this time.

overtime compensation, "[a]ny employer who violates the provisions of section 206 or section 207 of [the FLSA] shall be liable to the employee . . . affected . . . in an additional equal amount as liquidated damages." 29 U.S.C.A. §216(b) (West 1998 & Supp. 2000). The liquidated damages provision of the FLSA is compensatory rather than punitive in nature; it accounts for "damages too obscure and difficult of proof for estimate" any other way. Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 707 (1945); Selker Bros., 949 F.2d at 1299.

It is within the district court's discretion to decline to award liquidated damages or liquidated damages in an amount less than that provided under §216(b) "if, and only if, the employer shows that he acted in good faith and that he had reasonable grounds for believing that he was not violating the Act." Marshall v. Brunner, 668 F.2d 748, 753 (3d Cir. 1982)(employees entitled to recover full amount of liquidated damages under §216(b)). See also Selker Bros., 949 F.2d at 1299 (liquidated damages award affirmed based on finding of willful violation); Martin v. Cooper Elec. Supply Co., 940 F.2d 896, 907 (3d Cir. 1991)(employer's failure to take affirmative steps to ascertain FLSA's requirements before a DOL investigation precludes a finding of reasonable good faith); Brock v. Claridge Hotel and Casino, 846 F.2d 180, 187 (3d Cir. 1988)(remanding to the district court for specific findings of fact underlying its

denial of liquidated damages).

The employer bears the burden of proof.¹² See Brock, 846 F.2d at 187. To meet the burden, the defendant employer must prove he has taken "affirmative steps to ascertain the Act's requirements, but nonetheless, violated its provisions." Cooper Elec. Supply Co., 940 F.2d at 908. Ignorance of the Act alone will not suffice. Brock, 846 F.2d at 187. This burden is a difficult one and the omission of a double damages award is the exception not the rule. See Cooper Elec. Supply Co., 940 F.2d at 908.

Clair Sours insisted throughout the trial that he had no attendants at any of his laundromats. There was no testimony that he or his wife made any attempt to determine the requirements of the Act; the only testimony in support of their good faith was Clair Sours' statement that after he had been contacted by the DOL regarding Walker's complaint, his accountant¹³ told him he did not owe her any money. This advice was not sought prior to the DOL investigation and does not show affirmative action by the Sours to learn the Act's requirements. See Cooper Elec. Supply Co., 940 F.2d at 908. Defendants have failed to meet their burden; full liquidated damages will be

¹²Compare the burden of proof of "willfulness" for statute of limitations purposes; there, the burden is on the plaintiff.

¹³Defendants' counsel advised the court that the Sours' accountant is also a lawyer. Tr. at 2/34.

awarded under the FLSA.

2. Pennsylvania Law

Liquidated damages are also available under Pennsylvania law. Under the WPCL, they are available in an amount equal to 25% of the total amount of wages due. See 43 P.S. §260.9a(b), §260.10¹⁴ (West 1992 & Supp. 2000). Liquidated damages under Pennsylvania law are payable when the failure to pay the wages was not in "good faith." See Godwin v. Visiting Nurse Ass'n Home Health Servs., 831 F. Supp. 449, 454 (E.D. Pa. 1993)(back wages and liquidated damages awarded to wrongfully discharged employee); Hartman v. Baker, 766 A.2d 347, 353 (Pa. Super. Ct. 2000)(reversing award of liquidated damages upon a finding that defendant employer used bad judgment but did not act in bad faith); Quinn v. Lebanon Steel Corp., No. 87-00463, 1987 WL 146046, *4 (Pa. Com. Pl. Dec. 22, 1987)(court declined to award liquidated damages when it could not determine whether defendant

¹⁴ Where wages remain unpaid for thirty days beyond the regularly scheduled payday, or in the case where no regularly scheduled payday is applicable, sixty days beyond the filing by the employe[e] of a proper claim . . . and no good faith contest or dispute of any wage claim including the good faith assertion of a right of set-off or counter-claim exists accounting for such non-payment, the employe[e] shall be entitled to claim, in addition, as liquidated damages, an amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars (\$500), whichever is greater.

43 P.S. §260.10 (West 1992 & Supp. 2000).

employer acted in good faith in contesting the plaintiff's claim).

The burden is on the defendant employer to prove by clear and convincing evidence that his contest to the employee's claim for non-payment was made in good faith. Hartman, 766 A.2d at 354. The defendants made no attempt to ascertain what they owed Walker prior to her filing a complaint with the DOL. After they were notified of the DOL investigation, Clair Sours contacted his accountant and sought his advice. Defendants did not prove by clear and convincing evidence that they acted in good faith when contesting Walker's wage claim; liquidated damages under state law are also appropriate if not duplicative.

K. Calculation of Damages

1. **October 1, 1997 through May 10, 1998**

a. FLSA

Under the FLSA, Walker was entitled to \$5270.00 or \$170.00 a week in minimum wages (forty hours a week at \$4.25 an hour) for the period of October 6, 1997 through May 10, 1998.¹⁵ During this thirty-one week period, defendants provided her the equivalent of \$3230.81 (or \$92.31 per week for October 1997 and January 1 - May 10, 1998 and \$138.46 per week for November and

¹⁵Under the FLSA, Walker is entitled to recover back wages from October 6, 1997 forward; the two years statute of limitations precludes her recovery of back wages for October 1 - October 5, 1997 under the FLSA.

December 1997)¹⁶ in rent reduction and Walker earned a total of \$5072.53 (or \$163.63 per week)¹⁷ in income from drop-off laundry. Walker was paid the equivalent of \$3033.34 (or \$97.85 per week) more than the minimum wage during this time period.

Walker was entitled to overtime wages for this period in the amount of \$13,537.39 or \$436.69 per week.¹⁸ The \$3033.34 Walker was "overpaid" for her first forty hours of work each week will be deducted from the overtime wages Walker is owed, bringing the total of back wages owed from this period to \$10,504.05 Walker is entitled to an additional \$10,504.05 in liquidated damages from this period, bringing her total damages for October 6, 1997 to May 10, 1998 under federal law to \$21,008.10.

b. State Law

Under Pennsylvania law, Walker was entitled to \$6592.00 or \$206.00 a week (forty hours a week at \$5.15 an hour) in minimum wages for the period of October 1, 1997 through May 10, 1998.¹⁹

¹⁶\$400.00 a month over 12 months is \$4800.00; divided by 52 weeks, the rent abatement is \$92.31 per week. \$600.00 a month over 12 months is \$7200.00; divided by 52 weeks, the rent rebate is \$138.46 per week.

¹⁷Walker's net income over 56 days was divided by 56 (\$23.375 per day) and then multiplied by seven days to arrive at a weekly income estimate.

¹⁸Walker worked 68.5 hours of overtime each week and was entitled to earn \$6.375 per hour for that time.

¹⁹Walker is entitled to recovery for the full 32 week period under state law; the applicable statute of limitations is three years.

During this period, defendants provided her the equivalent of \$3323.12 (or \$92.31 per week for October 1997 and January 1 - May 10, 1998 and \$138.46 per week for November and December 1997) in rent reduction and Walker earned a total of \$5236.16 (or \$163.63 per week) in income from drop-off laundry. Walker was paid the equivalent of \$1967.28 (or \$61.48 per week) more than the minimum wage during this time period.

Walker was entitled to overtime wages for this period in the amount of \$16,933.12 or \$529.16 per week.²⁰ The \$1967.28 she was "overpaid" in minimum wages for the first forty hours she worked each week is deducted from this amount, bringing the total back wages due under Pennsylvania law to \$14,965.84. She is also entitled to an additional \$3741.46 (25% of \$14,965.84) in liquidated damages from this period, bringing her total damages for October 1, 1997 to May 10, 1998 under state law to \$18,707.30.

Walker will be awarded \$21,008.10 in back wages and liquidated damages under the FLSA for October 6, 1997 through May 10, 1998 and she will also be permitted to recover under state law for October 1 through October 5, 1997.²¹ For those five

²⁰Walker worked 68.5 hours of overtime each week and was entitled to earn \$7.725 per hour for that time.

²¹Although the statute of limitations under the FLSA prohibits her from recovering back wages for this period, the statute of limitations under Pennsylvania law does not; the damages are not duplicative.

days, over which she worked 77.5 hours, she was paid the equivalent of \$43.90 more than the minimum wage for the first forty hours.²² For the remaining 37.5 hours of overtime she worked over those five days, Walker was entitled to \$289.69.²³ Walker is entitled to \$245.79 (\$289.69 overtime minus \$43.90 "overpayment"), plus twenty-five percent in liquidated damages (\$61.45) or \$307.24 in addition to the \$21,008.10 she is entitled to under the FLSA. Walker will be awarded \$21,315.34 for the period of October 1, 1997 through May 10, 1998.

2. December 1, 1998 through April 14, 1999

a. FLSA

Under the FLSA, Walker was entitled to \$3361.75 or \$170.00 a week (forty hours a week at \$4.25 an hour) in minimum wages for the nineteen week, two day period. During this period, defendants provided her with the equivalent of \$2670.30 (or \$138.46 per week) in rent reduction²⁴ and Walker earned a total of \$3255.73 in income from drop-off laundry and ironing.²⁵

²²Based on a weekly "overpayment" of \$61.48 under state law, Walker was "overpaid" \$8.78 each day; \$8.78 for five days is \$43.90.

²³Thirty-seven and a half hours at \$7.725 (in time and a half) equals \$289.69.

²⁴Over twelve months, the \$600 per month rent abatement equals \$7200; divided by 52 weeks, the rent abatement equals \$138.46 a week.

²⁵Walker earned approximately \$163.63 a week from drop-off laundry and a total of \$100.00 in drop-off ironing over the

Walker was paid the equivalent of \$2564.28 more than the minimum wage during this time period.

Walker was entitled to overtime wages for this period in the amount of \$8297.11 or \$436.69 per week. The \$2564.28 Walker was "overpaid" for her first forty hours of work each week will be deducted from the \$8297.11 Walker is owed in overtime wages, bringing the total of back wages owed from this period to \$5732.83. Walker is entitled to an additional \$5732.83 in liquidated damages from this period, bringing her total damages for December 1, 1998 to April 14, 1999 under federal law to \$11,465.66.

b. State Law

Under Pennsylvania law, Walker was entitled to \$4073.65 or \$206.00 a week (forty hours a week at \$5.15 an hour) in minimum wages for the nineteen week, two day period. During this period, defendants provided her with the equivalent of \$2670.30 (or \$138.46 per week) in rent reduction and Walker earned a total of \$3255.73 in income from drop-off laundry and ironing. Walker was paid the equivalent of \$1852.38 more than the minimum wage.

Walker was entitled to overtime wages for this period in the amount of \$10,054.04 or \$529.16 per week. The \$1852.38 she was "overpaid" for the first forty hours she worked each week is deducted from this amount, bringing the total back wages due

entire nineteen week, two day period.

under Pennsylvania law for this period to \$8201.66. Walker is also entitled to an additional \$2050.42 (25% of \$8201.66) in liquidated damages from this period, bringing her total damages for December 1, 1998 to April 14, 1999 under state law to \$10,252.08.

3. **Total Damages**

Walker is not entitled to a duplicative award of both federal and state law damages for the same time periods; Walker will be awarded back wages and liquidated damages under the FLSA (the higher of the two) for October 6, 1997 through May 10, 1998 and December 1, 1997 through April 14, 1999, and under Pennsylvania law for October 1 through October 5, 1997, in a total amount of \$32,781.00.

III Conclusions of Law

1. Washbasket is an "enterprise engaged in commerce" within the meaning of the FLSA.

2. Walker was an "employee" within the meaning of the FLSA and under state law.

3. Clair and Mildred Sours, as a partnership, were "employers" within the meaning of the FLSA and under state law.

4. The court has subject matter jurisdiction.

5. The statute of limitations under the FLSA is two years; Walker may recover under the Act for wages from October 6, 1997.

6. The Pennsylvania statute of limitations is three years;

Walker may recover back wages and liquidated damages under state law from October 1 through October 5, 1997.

7. Defendants paid Walker the minimum wage required under the FLSA and Pennsylvania law.

8. Defendants failed to pay Walker overtime compensation required by the FLSA and Pennsylvania law.

9. Under section 207 of the FLSA Walker may claim \$16,236.88 back wages.

10. Under § 216(b) of the FLSA, Walker is entitled to an additional \$16,236.88 in liquidated damages for violation of the FLSA.

11. Under 43 P.S. §333.104(c), Walker is owed \$245.79 in back wages for October 1 - October 5, 1997.

12. Under 43 P.S. §260.9a(b) and §260.10, Walker is entitled to an additional \$61.45 in liquidated damages for violation of Pennsylvania wage law.

13. Walker's employment at Washbasket was not terminated because she filed a complaint with the DOL; her retaliation claim is dismissed.

13. The court will enter judgment in favor of Walker in the amount of \$32,781.00.

APPENDIX A

October 1, 1997 through May 10, 1998

	<u>FLSA</u>	<u>Pennsylvania Law</u>
<u>Minimum Wages</u>	40 hrs x \$4.25/hr = \$170/wk \$170/wk x 31 wks = \$5270	40 x \$5.15/hr = \$206/wk \$206/wk x 32 wks = \$6592
<u>Value of Rent Abatement</u> <u>October 1997 and</u> <u>January 1 -</u> <u>May 10, 1998</u>	\$400/mo x 12 mos = \$4800 \$4800 ÷ 52 wks = \$92.31 \$92.31/wk x 23 wks = \$2123.13	\$400/mo x 12 mos = \$4800 \$4800 ÷ 52 wks = \$92.31 \$92.31/wk x 24 wks = \$2215.44
<u>Value of Rent Abatement</u> <u>November</u> <u>- December 1997</u>	\$600/mo x 12 mos = \$7200 \$7200 ÷ 52 wks = \$138.46 \$138.46/wk x 8 wks = \$1107.68	\$600/mo x 12 mos = \$7200 \$7200 ÷ 52 wks = \$138.46 \$138.46/wk x 8 wks = \$1107.68
<u>Income Earned</u> <u>(Drop-off Income)</u>	\$1309 net ÷ 56 days = \$23.375/day \$23.375/day x 7 days = \$163.63/week \$163.63/wk x 31 wks = \$5072.53	\$1309 net ÷ 56 days = \$23.375/day \$23.375/day x 7 days = \$163.63/week \$163.63/wk x 32 wks = \$5236.16
<u>"Overpayment" of</u> <u>Minimum Wages</u>	\$2123.13 + \$1107.68 + \$5072.53 = \$8303.34 (income) \$8303.34 - \$5270 = \$3033.34	\$2215.44 + \$1107.68 + \$5236.16 = \$8559.28 \$8559.28 - \$6592 = \$1967.28
<u>Overtime Wages</u>	68.5 hrs x \$6.375/hr = \$436.69/wk \$436.69/wk x 31 wks = \$13,537.39	68.5/hrs x \$7.725/hr = \$529.16/wk \$529.16/wk x 32 wks = \$16,933.12
<u>TOTAL Back Wages</u> <u>Due</u>	\$13,537.39 overtime due - \$3033.34 "overpayment" = \$10,504.05	\$16,933.12 overtime due - \$1967.28 "overpayment" = \$14,965.84
<u>Liquidated Damages</u>	100% of \$10,873.25 = \$10,504.05	25% of \$14,965.84 = \$3741.46
<u>TOTAL Back Wages +</u> <u>Liquidated Damages</u>	\$21,008.10	\$18,707.30

APPENDIX B

October 1 - October 5, 1997

Walker worked 77.5 hours over these five days (15.5 hours a day). As calculated in Appendix A, under state law, Walker was "overpaid" in minimum wages during her first period of employment \$61.48 per week (\$1967.28 total "overpayment" ÷ 32 weeks); she was "overpaid" \$8.78 day (\$61.48 ÷ 7 days) for five days for a total "overpayment" of \$43.90 for the first forty hours she worked over these five days.

Walker worked 37.5 hours of overtime over those five days; she was entitled to \$7.725 for each of those hours or \$289.69. The \$43.90 she was "overpaid" in minimum wages is subtracted from that amount to arrive at a total of \$245.79 in back wages owed. She is also entitled to liquidated damages for this period in the amount of \$61.45 (25% of \$245.79), bringing the total award for October 1 through October 5, 1997 to \$307.24.

APPENDIX C

December 1, 1998 - April 14, 1999

	<u>FLSA</u>	<u>Pennsylvania Law</u>
<u>Minimum Wages</u>	40 hrs x \$4.25/hr = \$170/wk \$170/wk x 19 wks = \$3230 31 hrs (2 days) x 4.25/hr = \$131.75 \$3230 + \$131.75 = \$3361.75	40 x \$5.15/hr = \$206/wk \$206/wk x 19 wks = \$3914 31 hrs (2 days) x 5.15 = \$159.65 \$3914 + \$159.65 = \$4073.65
<u>Value of Rent Abatement</u>	\$600/mo x 12 mos = \$7200 \$7200 ÷ 52 wks = \$138.46/wk \$138.46/wk x 19 wks = \$2630.74 \$138.46/wk ÷ 7 days = \$19.78/day x 2 days = \$39.56 \$2630.74 + \$39.56 = \$2670.30	\$600/mo x 12 mos = \$7200 \$7200 ÷ 52 wks = \$138.46/wk \$138.46/wk x 19 wks = \$2630.74 \$138.46/wk ÷ 7 days = \$19.78/day x 2 days = \$39.56 \$2630.74 + \$39.56 = \$2670.30
<u>Income Earned (Drop-off Income)</u>	\$1309 net (laundry) ÷ 56 days = \$23.375/day \$23.375/day x 7 days = \$163.63/week \$163.63/wk x 19 wks = \$3108.97 \$163.63/wk ÷ 7 days = \$23.38/day x 2 days = \$46.76 \$3108.97 + \$46.76 = \$3155.73 (laundry) + \$100 (ironing) = \$3255.73	\$1309 net (laundry) ÷ 56 days = \$23.375/day \$23.375/day x 7 days = \$163.63/week \$163.63/wk x 19 wks = \$3108.97 \$163.63/wk ÷ 7 days = \$23.38/day x 2 days = \$46.76 \$3108.97 + \$46.76 = \$3155.73 (laundry) + \$100 (ironing) = \$3255.73
<u>"Overpayment" of Minimum Wages</u>	\$2670.30 + \$3255.73 = \$5926.03 (income) \$5926.03 - \$3361.75 = \$2564.28	\$2670.30 + \$3255.73 = \$5926.03 (income) \$5926.03 - \$4073.65 = \$1852.38
<u>Overtime Wages</u>	68.5 hrs x \$6.375/hr = \$436.69/wk \$436.69/wk x 19 wks = \$8297.11	68.5/hrs x \$7.725/hr = \$529.16/wk \$529.16/wk x 19 wks = \$10,054.04
<u>TOTAL Back Wages Due</u>	\$8297.11 overtime due - \$2564.28 "overpayment" = \$5732.83	\$10,054.04 overtime due - \$1852.38 "overpayment" = \$8201.66
<u>Liquidated Damages</u>	100% of \$5732.83 = \$5732.83	25% of \$8201.66 = \$2050.42
<u>TOTAL Back Wages + Liquidated Damages</u>	\$11,465.66	\$10,252.08

APPENDIX D

Total Damage Award

BACK OVERTIME WAGES AND LIQUIDATED DAMAGES UNDER THE FLSA (October 6, 1997 - May 10, 1998):	\$21,008.10
BACK OVERTIME WAGES AND LIQUIDATED DAMAGES UNDER PENNSYLVANIA LAW (October 1 - October 5, 1997):	\$307.24
BACK OVERTIME WAGES AND LIQUIDATED DAMAGES UNDER THE FLSA (December 1, 1998 - April 14, 1999):	<u>\$11,465.66</u>
TOTAL DAMAGE AWARD (ACTUAL AND LIQUIDATED DAMAGES):	\$32,781.00

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHY WALKER : CIVIL ACTION
: :

v. :
:
WASHBASKET WASH & DRY, :
CLAIR L. SOURS, and MILDRED SOURS : NO. 99-4878

JUDGMENT

AND NOW, this 5th day of July, 2001, for the reasons stated in the foregoing memorandum, **JUDGMENT** is entered against defendants and in favor of plaintiff in the total amount of \$32,781.00 (actual + liquidated damages).

S.J.