COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

GEORGE LEGRICE & SPIKE'S SPEED SHOP D/B/A/ BASEMENT POWERSPORTS, INC. *Petitioner*	:	Docket No. LB-22-0254
v.	:	
OAG, FAIR LABOR DIVISION *Respondent*	:	

Appearance for Petitioner:

George LeGrice, *pro se*
Brockton, MA 02301

Appearance for Respondent:

Meryum Khan, Esq.
Fair Labor Division
Massachusetts Attorney General's Office
Boston, MA 02108

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Petitioner, George LeGrice, the owner of Spike's Speed Shop, did not hire or employ the complainant, Hiram Gonzalez; nor did he employ others, all of whom volunteered to help him out around the shop. Because the Petitioner did not have any employees, he had no obligation to keep employment records, such as payroll records. The citation for failure to keep these records is therefore vacated.

DECISION

The Petitioner, George LeGrice, the owner of Spike's Speed Shop, appeals a citation for violation of the Massachusetts wage and hours law imposed by the Office of the Attorney General ("OAG"). On June 20, 2023, I conducted a hearing via the Webex platform. The Petitioner testified on his behalf; the OAG called one witness, Kimberly Lampereur. I also admitted Exhibits 1 – 4 into evidence.[1] At the end of the hearing, the parties presented summations at which point I closed the administrative record.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. The Petitioner is the owner of Spike's Speed Shop, an autobody shop in Brockton, Massachusetts. (Petitioner testimony.)
2. In December 2021, the Petitioner was looking for a new autobody technician, so he posted an advertisement on-line. (Ex. 2; Lampereur testimony; Petitioner testimony.)
3. Hiram Gonzalez responded to the advertisement, and the Petitioner reached out to him. (Ex. 2; Lampereur testimony; Petitioner testimony.)
4. There are directly conflicting versions about what happened next, which I resolve below. There is no dispute, however, that Mr. Gonzalez eventually performed some tasks at the Petitioner's autobody shop.
5. After approximately two weeks, the Petitioner told Mr. Gonzalez he decided to "go another route" and Mr. Gonzalez was no longer welcome. (Ex. 2; Lampereur testimony; Petitioner testimony.)

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[1] OAG submitted one exhibit after the hearing. The Petitioner did not object.

6. Mr. Gonzalez expected to be paid for his time but was not. (Ex. 2.)

7. Thereafter, Mr. Gonzalez filed a complaint with the OAG, who initiated an investigation. (Ex. 4; Lampereur testimony.)

8. Kimberly Lampereur was the assigned investigator. She initially communicated with Mr. Gonzalez, both by e-mail and phone. He gave her a statement. (Ex. 2; Lampereur testimony.)

9. She then reached out to the Petitioner by phone. She explained the allegations, which he disputed. The Petitioner said there was never an agreement about wages, he was just "trying him out," and Mr. Gonzalez never clocked into his system because he was never hired. (Lampereur testimony.)

10. Investigator Lampereur called the shop a few more times and spoke with someone named Melanie, who was answering the phones. She spoke to her about the details of the case once but also had multiple, non-substantive conversations. (Lampereur testimony.)

11. Eventually, she sent the Petitioner a formal notice requesting he produce payroll and timekeeping records. (Ex. 1.)

12. On April 6, 2021, Investigator Lampereur and counsel for OAG held a conference call with the Petitioner. In that call, the Petitioner explained he did not have any employees; there were just people helping him with small administrative tasks—like his friend Melanie and, sometimes, his mother. He also said he had an apprentice named Navi. (Lampereur testimony.)[2]

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[2] Despite speaking with Melanie a few times, Investigator Lampereur did not ask her about what she did or whether she even expected payment. If she did, she did not include that in a report or her testimony—other than to note Melanie answered the phones. The Petitioner confirmed that Melanie was a long-time friend who volunteered to answer his phones sometimes.

13. According to Investigator Lampereur, he explained he did not record hours for Mr. Gonzalez because "he didn't think it would come to this." (Lampereur testimony.)

14. He ultimately produced timekeeping records for himself. He did not produce any payroll records. He included a note saying he did not have any because he did not take a salary. (Lampereur testimony.)

15. The OAG then issued a citation in June 2022. Just before then, Mr. Gonzalez unexpectedly passed away. Accordingly, the citation covered only the Petitioner's alleged failure to keep true and accurate payroll records; it did not include anything related to Mr. Gonzalez's pay. (Ex. 3; Lampereur testimony.)

16. As noted, the evidence about the arrangement between Mr. Gonzalez and the Petitioner is disputed. Because Mr. Gonzalez passed away, the only evidence of his version of events came in the form of unsworn hearsay: his initial complaint and Investigator Lampereur's (written and oral) summary of his statement. (Exs. 2 & 4; Lampereur testimony.) The only corroboration are the few facts that Mr. Legrice does not dispute (which do not help resolve this issue).

17. Because I do not find the unsworn hearsay in this case reliable, and consequently do not believe some of Mr. Gonzalez's statements, I do not credit Mr. Gonzalez's version of events. I understand the OAG is limited in what it can present, given Mr. Gonzalez's unexpected passing; but absent more, I do not find the situation unfolded the way Mr. Gonzalez described.

Investigator Lampereur never spoke with the Petitioner's mother or Navi. The only evidence with respect to Navi came from the complainant, who told Investigator Lampereur Navi "agreed to work a couple of weeks for free." (Exhibit 2.). The only evidence with respect to the Petitioner's mother was the Petitioner's own testimony; he explained his mother helped him understand some paperwork.

18. What really matters is whether Mr. Gonzalez and the Petitioner had a meeting of the minds with respect to employment. I find they did not.

19. I credit most of the Petitioner's testimony and find the following facts based on it.[3]

20. The Petitioner was looking to hire someone. (Petitioner testimony.)

21. However, he did not promise Mr. Gonzalez a job. He did not hire him. There was no evidence that he filled out any employment documents. There was never an agreement about how much Mr. Gonzalez would get paid if he worked there. (Petitioner testimony.)

22. Instead, he invited Mr. Gonzalez to his shop as an opportunity for him to show the Petitioner if he knew what he was doing. (Petitioner testimony.)

23. The Petitioner explained that it is common within the automotive industry for those looking for a job to be asked "what they have done." Typically, they provide photos or a

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[3] The Petitioner's testimony was detailed and logical, even if he was curt. It was consistent with what he had said from the beginning of the investigation. It was also consistent with, and more believable, than parts of Mr. Gonzalez's statements.

To give one example, Mr. Gonzalez claimed that he worked 80 hours. However, he then explained what he did during that time: he "trained" Navi, "completed two bumpers, two panels, and cleaned up the shop . . . the bumpers and panels he worked on had already been taken off the cars." He added, "Legrice told him he did not paint the bumpers right." (Ex. 2.)

On the other hand, the Petitioner strongly disputed that Mr. Gonzalez worked anywhere close to 80 hours. He explained Mr. Gonzalez spent most of his time on his phone and sitting around. He told Mr. Gonzalez the first job he would give him, if he were to hire him, would be to paint a customer's bumper; the Petitioner had him paint a scrap bumper to see if he could do it. Ultimately, Mr. Gonzalez's final product was "horrible." (Petitioner testimony.)

I do not believe that if Mr. Gonzalez had worked 80 hours, he would have accomplished so little. I also do not believe he was training Navi, because the Petitioner was looking for a mechanic, not a trainer, and Mr. Gonzalez had complained he left his last job because his employer had him training others. Also, Mr. Gonzalez's statement that he "completed two bumpers . . . that had already been taken off the cars" supports the Petitioner's testimony that he did not have Mr. Gonzalez perform any work for customers; rather, he wanted to see if he knew what he was doing.

portfolio of their work. Mr. Gonzalez did not have this, and the Petitioner was unsure if he was really qualified. That is why the Petitioner needed to see what Mr. Gonzalez could do. (Petitioner testimony.)

24. I do not think the Petitioner, or anyone in his situation, would hire someone for this kind of position based just on a resume and assurances at an interview. I credit his testimony that he needed more confirmation Mr. Gonzalez could do the job. (Petitioner testimony.)

25. I have no doubt they talked about pay. I am sure Mr. Gonzalez asked how much he would be paid if hired. I believe the Petitioner probably told him some amount. But I credit the Petitioner that he was explaining what he would pay him if he hired him, not extending a job offer. (Petitioner testimony.)

CONCLUSION AND ORDER

A person aggrieved by a citation from the Attorney General may appeal it. *See* G.L. c. 149, § 27C(b)(4). If the petitioner "demonstrates by a preponderance of evidence that the citation . . . was erroneously issued," DALA may vacate or modify the citation as appropriate. *Ibid.* Otherwise, DALA must affirm the citation. *Ibid.*

Under the Commonwealth's Wage and Hour Laws, employers must keep true and accurate records of each employee's name, address, occupational classification, hours worked, wages paid, and "such other information . . . deem[ed] material and necessary" by the Attorney General or the Department of Labor Standards. *See* G.L. c. 151, § 15. To ensure compliance, the Attorney General may issue civil citations to any employer who fails to keep these records. *See* G.L. c. 151, § 19(3).

The Petitioner acknowledges that he did not keep payroll records. He argues Mr. Gonzalez was merely an "intern" (or trainee) and neither Melanie, his mother, nor Navi worked

for him—they just helped him out sometimes. Therefore, the only issue in this case is whether any of these were employees for whom records had to be kept.

Neither Melanie, the Petitioner's mother, nor Navi were employees. Rather, they volunteered to help him out sometimes. The Petitioner is a small business owner who, during the relevant time, worked alone. Just because a friend or family member volunteers occasionally to help someone out at their office does not create an employer/employee relationship requiring payment and payroll records. Melanie and the Petitioner's mother helped with small, administrative tasks; Navi was, at most, an apprentice who was there for just a few weeks. There is no evidence any of them received or even expected compensation. *See e.g. Walling v. Portland Terminal Co.,* 330 U.S. 148, 152 (1947) (Fair Labor Standard Act does not apply to volunteers who "without promise or expectation of compensation, but solely for [their] personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit."); *see also Figurowski v. Marbi Inv'rs, LLC*, 2018 WL 1582072, at *10 (E.D.N.Y. Mar. 30, 2018) (where wife helped her husband, the employee, in various tasks he was hired to perform, wife was not an employee herself and she could not have expected to receive compensation.).

The Petitioner's relationship with Mr. Gonzalez is different. There is a real dispute as to whether they established an employer/employee relationship. "In order . . . to have entered into a valid contract, whether an employment or [something else], there must, at minimum have been a meeting of the minds between the parties 'on the same proposition on the same terms at the same time.'" *Wheeler, et al. v. OAG*, LB-11-693-695, *16 (DALA Oct. 10, 2013), *quoting I & R Mechanical, Inc. v. Hazelton Mfg. Co.*, 62 Mass. App. Ct. 452, 455 (2004). As in *Wheeler*, "[t]he evidence suggests that this did not occur." *Wheeler, supra.*

"A binding offer is made when the offeror leads the offeree reasonably to believe one has been made. At least unless words are unambiguously clear, their meaning may vary depending upon the total circumstances." *Boleman v. Congdon and Carpenter Co.*, 638 F.2d 2, 4 (1st Cir. 1981). However, there is no obligation "where parties have merely reached the stage of 'imperfect negotiation' prior to formalizing a contract, and have not yet reduced their agreement to terms." *Lafayette Place Assocs. v. Boston Redevelopment Auth.*, 427 Mass. 509, 517-518 (1998), *citing Rosenfield v. United States Trust Co.*, 290 Mass. 210, 216 (1935). Here, there was no unambiguous offer of employment. Mr. Gonzalez could not have reasonably believed he had been hired.

I acknowledge the Petitioner said he looked up what it meant to be an "unpaid intern" in Massachusetts, and he considered Mr. Gonzalez one. I would not characterize Mr. Gonzalez's status as an "intern" or "trainee." That involves, *inter alia*, actual supervision and training. *See* Who Can Be an Unpaid Intern, < https://www.mass.gov/service-details/volunteers-and-interns > (last visited June 21, 2023). Even the Petitioner would concede that was not the arrangement here. The Petitioner wanted to find someone to work for him, not someone he needed to train. That said, labels do not matter. Whether an employer labels someone an "intern" does not define whether that person is an employee entitled to pay. *See McBride, et. al. v. OAG,* LB-14-386 *11 (DALA Mar. 23, 2015). Rather, what matters is that, based on this record, I do not find the parties came to a mutual understanding about whether Mr. Gonzalez was going to work for the Petitioner. *See Wheeler, supra.*

The Petitioner was looking for help and probably would have hired Mr. Gonzalez if he thought Mr. Gonzalez was qualified for the job. But the Petitioner could not tell if he was qualified based just on his interview and online submission. Therefore, the Petitioner agreed to

let Mr. Gonzalez use his shop to demonstrate he knew what he was doing. The Petitioner did not have Mr. Gonzalez do any work for a customer. Instead, he had him paint a few scrap bumpers he had lying around. Mr. Gonzalez did not dispute this in his statement. Given what little Mr. Gonzalez actually did, it corroborates the Petitioner's version of events that he did not make a firm job offer. If Mr. Gonzalez believed he had been hired, it was unreasonable given he did not sign any employment paperwork, he was not entered into the Petitioner's system, he did not do any work for any customer, and there was no agreement about payment.

Because Mr. Gonzalez was not the Petitioner's employee—and neither were Melanie, his mother, nor Navi—the Petitioner has proven by a preponderance of the evidence that the citation was erroneously issued. The OAG's citation for failure to keep accurate records is **vacated.**

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

JUL 6 – 2023

Eric Tennen
Administrative Magistrate