

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM )	Case No. 1435-2014
OF KRISTINE M. RAAP, )	
)	
Claimant, )	<b>ORDER GRANTING</b>
)	<b>RESPONDENT'S MOTION</b>
vs. )	<b>FOR SUMMARY JUDGMENT</b>
)	
POPLAR SCHOOL DISTRICT NO. 9, )	
)	
Respondent. )	

\* \* \* \* \*

**I. INTRODUCTION**

On March 3, 2014, Kristine M. Raap filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Poplar School District No. 9 (School District) owed her \$3,350.00 in rent and \$839.01 in utilities that were deducted from her pay without her written authorization.

On April 22, 2014, the Wage and Hour Unit dismissed Raap's claim finding Raap's acceptance and continued residency in housing owned by the School District constituted an implied consent to the payroll deductions. On April 21, 2014, Raap filed a timely request for a contested case hearing.

On June 20, 2014, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (Hearings) for hearing after attempts at mediation were unsuccessful. On July 9, 2014, Hearing Officer Caroline A. Holien held a scheduling conference during which the parties agreed on deadlines for hearing preparation. Those agreed upon deadlines were set forth in a Scheduling Order that was issued on July 10, 2014.

On August 29, 2014, the School District filed a motion for summary judgment contending Raap's continued residence in housing owned by the School District

constituted implied consent to the payroll deductions made in accordance with the laws of the State of Montana.

On September 10, 2014, the claimant requested an extension of time to submit her response to the School District's motion for summary judgment. The claimant argued she was unable to respond because the respondent had not turned over its discovery. As neither party is required to produce its discovery for the other party and the time for exchanging exhibits and witness lists had not yet passed, the claimant's motion was denied. The claimant was directed to submit her response no later than September 12, 2014, as originally set forth in the Scheduling Order dated July 10, 2014.

On September 23, 2014, the claimant requested additional time to prepare her response to the respondent's motion for summary judgment and to reset the date and time for hearing. The respondent did not object to the claimant's request. The claimant was directed to submit her written response no later than October 28, 2014. The respondent was directed to submit its rebuttal no later than November 3, 2014. Both submissions were timely received.

Based upon the submissions of the parties and their arguments, the School District's motion for summary judgment is hereby granted, and the case is dismissed. The reasons for the rulings on both motions are set forth below.

## **II. ISSUE**

Whether Kristine M. Raap's acceptance of and continued residence in housing owned by and leased to her by the School District constituted implied consent to the withholding of wages for the payment of rent and utilities.

## **III. ANALYSIS**

### **A. Facts Established by the Pleadings and Responses to Discovery Requests on File**

1. In an email exchange on August 15, 2013, Kristine M. Raap inquired about the availability of housing. Superintendent James Rickley informed Raap that Poplar School District No. 9 (School District) was in the process of building homes. Rickley informed Raap that a three-bedroom home would rent for \$450.00, plus utilities, and a two-bedroom home would rent for \$400.00, plus utilities. Respondent's Exhibit B.

2. Raap was not required to live in School District owned housing. Raap was free to live anywhere she chose and continue in her employment with the School District. Respondent's Exhibit S.

3. On August 23, 2013, Raap expressed an interest in a three-bedroom unit with a large yard to accommodate her dogs. Respondent's Exhibit C.

4. On August 29, 2013, Rickley met with Raap and other School District employees. Rickley offered Raap a three-bedroom unit (Unit 142). Raap accepted Rickley's offer of Unit 142. Respondent's Exhibits A and D.

5. Prior to receiving the key for Unit 142, Raap received a lease packet, which included the lease contract and a payroll deduction authorization form. The payroll authorization authorized the School District to deduct rent and utilities from Raap's paycheck. Respondent's Exhibit G. On August 30, 2013, Raap took possession of Unit 142 and moved what belongings she had with her into the unit. From August 30, 2013 through July 7, 2014, Raap continuously resided at Unit 142. Respondent's Exhibits A, E, and F.

6. On September 2, 2013, Raap informed School District employee Linda Christensen via email that she was agreeable with the provision of the lease agreement that required \$450.00 to be deducted from her paycheck to cover the cost of the rental. Raap objected to the School District withholding an amount to cover utilities and requested the utilities be placed in her name and billed directly to her. Respondent's Exhibit H.

7. On September 3, 2013, Christensen informed Raap via email that the rental agreement required the School District to charge out utilities on a monthly basis after being billed directly by Agland and Sheridan Electric. Raap responded that same day and argued that she was not informed of the provision regarding the cost of utilities being deducted from her check prior to taking possession of Unit 142. Raap again confirmed that she was willing to accept the School District's deduction of \$450.00 from her paycheck to cover the cost of rent. Respondent's Exhibit I. Christensen responded and told Raap that the utilities would remain in the name of the School District and Raap would receive a copy of the statement for usage for her unit. Respondent's Exhibit H.

8. On September 19, 2013, Rickley informed Raap via email that she was required to sign and return her lease agreement into the central office by September 20, 2013. Raap responded and informed Rickley that she was still waiting

for all of her housing related questions to be answered. Raap also demanded an itemized statement of all deductions from her pay. Respondent's Exhibit L.

9. On October 7, 2013, Rickley sent Raap a letter advising her that she needed to return the signed lease agreement or the School District would begin the petition process in the Fort Peck Tribal Court for her eviction from the premises. Respondent's Exhibit M.

10. On October 11, 2013, Raap filed a complaint of discrimination against the School District with the Montana Human Rights Bureau. Respondent's Exhibit N. The School District decided against pursuing an eviction to avoid any allegation of retaliation related to the Human Rights complaint.

11. On October 22, 2013, Raap demanded the School District stop deducting the cost for rent and utilities from her paycheck after outlining a series of problems she had experienced with School District staff and maintenance workers. Respondent's Exhibit K.

12. In the Fall of 2013, Raap filed a wage claim with the Wage and Hour Unit alleging the School District improperly deducted money from her pay to cover the rental costs and utilities related to her residence in School District owned housing. In an email exchange, Theresa Sroczyk, Compliance Specialist, noted:

“However, if you continue to live in the housing provided by your employer and they take the rent out of your check, you have received the benefit of the housing and therefore it could be considered a proper withholding. The fact that living there is voluntary means that you have the option to live there and elected to do so, and owe the landlord/employer rent. Furthermore, the housing does not seem to be considered part of your wages. Because you elect not to leave, then you are implying that you agree to the withholdings.”

Respondent's Exhibit R.

13. On January 8, 2014, School District Clerk Wanda Kim sent Raap a memorandum informing her of the School District's offer to discontinue the payroll deductions for housing and utilities and to reimburse her \$3,086.84 for the rent and utilities that had been withheld from her pay. The memorandum stated that Raap's acceptance of the School District's offer would constitute acknowledgment that Raap

did not agree with the terms and conditions of the lease and she would have to vacate Unit 142 by February 11, 2014. Respondent's Exhibit O.

14. On January 24, 2014, the School District offered to stop the payroll deductions in exchange for Raap signing the lease agreement. Raap did not sign the lease agreement or respond to the School District's offer. Raap made no effort to pay the School District directly for the rental cost. Respondent's Exhibit J.

15. In an email exchange, Raap informed the School District that it did not have the right to evict her and she demanded an accounting for the monies withheld for rent and utilities. Respondent's Exhibits P through Q.

16. On February 10, 2014, the Human Rights Bureau issued a no-cause determination regarding Raap's complaint of discrimination.

17. On March 3, 2014, Raap filed a wage claim with the Wage and Hour Unit of the Department of Labor and Industry.

18. Raap continued to reside in Unit 142 with the School District making deductions for rent and utilities from her pay. On or about July 7, 2014, Raap vacated the residence.

19. The School District made the following reasonable deductions from Raap's pay to cover the cost of rent and utilities:

<u>DATE</u>	<u>RENT</u>	<u>UTILITIES</u>
09-05-13	\$550.00*	\$0
09-20-13	\$550.00*	\$0
10-04-13	\$225.00	\$28.27
10-18-13	\$225.00	\$54.31
11-05-13	\$225.00	\$33.38
11-20-13	\$225.00	\$216.66
12-05-13	\$225.00	\$33.40
12-20-13	\$225.00	\$0
01-04-14	\$225.00	\$45.82
01-17-14	\$225.00	\$118.37
02-05-14	\$225.00	\$51.90
02-20-14	\$225.00	\$256.90
<b>TOTAL:</b>	<b>\$3,350.00</b>	<b>\$839.01</b>

\* These payments appear to account for a deposit of \$650.00, plus the first month's rent of \$450.00, for a total of \$1,100.00. The parties do not appear to dispute the amounts withheld from Raap's pay and neither party has offered any clarification as to the basis for the deductions of \$550.00 on September 5, 2013 and September 20, 2013.

20. According to the 2012 American Community Survey (ACS) conducted by the United States Census Bureau, the median gross rent in the State of Montana was \$681.00, with a margin of error +/- 13. See Addendum A.

## B. Standard for Summary Judgment

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where "the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 5(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042. The "party opposing summary judgment must direct [the court's] attention to specific, triable facts," *S. Cal. Gas Co. V. City of Santa Ana*, 336 F.3d 885, 889 (9<sup>th</sup> Cir. 2003), and the reviewing court is "not required to comb through the record to find some reason to deny a motion for summary judgment." *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2001) (quoting *Forsberg v. Pac. NW. Bel Tel. Co.*, 840 F.2d 1409, 1418 (9<sup>th</sup> Cir. 1988)). See *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9<sup>th</sup> Cir. 2003) ("[The nonmoving party] cannot defeat summary judgment with allegations in the complaint, or with unsupported conjecture or conclusory statements").

To meet this burden, the opposing party must present facts of a substantial nature, and speculative statements are insufficient to raise a genuine issue of material fact. *Brothers v. Gen. Motors Corp.* (1983), 202 Mont. 477, 658 P.2d 1108. Summary judgment is proper if the opposing party fails to present a genuine issue of material fact of a substantial nature, not fanciful, frivolous, gauzy, or merely suspicious. *Cheyenne W. Bank v. Young v. Zastrow* (1978), 179 Mont. 492,

587 P.2d 401; see also *Kimble Properties, Inc. v. State* (1988), 231 Mont. 54, 750 P.2d 1095. Reasonable inferences drawn from the proof must be drawn in favor of the party opposing summary judgment. *Sherrard v. Prewett*, 2001 MT 228, ¶8, 306 Mont. 511, 36 P.3d 378.

At issue in this case is whether the School District made a reasonable deduction for “board, room, and other incidentals supplied by the employer. . . .” Montana Code Annotated § 39-3-204(1) states:

Except as provided in subsections (2) and (3), every employer of labor in the State of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks and a person for whom labor has been performed may not withhold from any employee any wages, earned or unpaid for longer than 10 business days after the wages are due and payable except as provided in § 39-3-204. However, a reasonable deduction may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are part of the conditions of employment, or as otherwise provided for by law.

“Other incidentals” have been defined to

“. . . include items the employer furnishes to the employee that are not required for the performance of the employee’s duties. These would include items such as furnished transportation that is not required for work purposes, electricity, water or gas furnished for the non-commercial use of the employee, or fuel, such as kerosene, coal, firewood, for the employee’s non-work use. These types of incidentals may properly be deducted from the employee’s wages, provided the employee agrees to the deductions, and the agreement is voluntary and uncoerced.”

In re Wage Claim of Beth Sauer, Case No. 1552-2011 (Mont. DOLI 2001).

Raap received a copy of the lease agreement and payroll authorization form at or near the time she took possession of Unit 142. Raap concedes residing in School District owned housing was voluntarily and she was free to live elsewhere and continue teaching for the School District. Raap argues she should not be bound by those provisions as she did not sign the lease agreement or payroll authorization form

and repeatedly protested the School District withholding rent and utilities from her pay. Raap has offered no explanation as to why she continued to reside in School District owned housing despite not being in agreement with the School District deducting the cost associated with her residency in its housing. It appears Raap was free to vacate at any time, and was apparently encouraged to do so on at least one occasion by the School District. Raap has offered no credible argument as to why she should be entitled to receive the amount withheld from her checks to cover the costs associated with her residency in School District owned housing despite her having enjoyed the benefits of that housing throughout the 2013-2014 school year and until on or about July 7, 2014.

The School District contends Raap's continued residence in the home constitutes an implied consent to the terms and conditions of the housing contract. The School District's argument is well taken. Raap voluntarily remained in the home despite knowing and understanding, as shown by her repeated emails to School District personnel and her communications with the Wage and Hour Unit, the terms and conditions of the lease agreement. The evidence shows the School District made a reasonable deduction for "board, room, and other incidentals supplied by the employer" from Raap's pay. Raap has offered no evidence showing the amounts deducted were unreasonable or inconsistent with the rental and utility costs in Poplar or other parts of Montana. In fact, a review of a 2012 ACS survey for rental prices in the State of Montana show the amount withheld for rent was reasonable. Raap's continued possession of School District owned housing constituted an implied agreement to the reasonable deduction for "board, room, and other incidentals," which is expressly allowed for under Mont. Code Ann. § 39-3-204(1). Therefore, Raap is not owed any additional compensation for amounts deducted from her pay to cover the costs associated with her residency in School District owned housing.

Raap has not shown a genuine issue of material fact of a substantial nature exists in this case. The respondent's motion for summary judgment is granted.

#### **IV. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. There is no dispute of material fact in this matter and the Poplar School District No. 9 is entitled to summary judgment as a matter of law.

3. No wages are due the claimant because the amounts withheld from Kristine Raap's pay for "board, room, and other incidentals supplied by the employer" were reasonable and authorized by Mont. Code Ann. § 39-3-204.

**V. ORDER**

The Poplar School District No. 9's motion for summary judgment is granted and this matter is dismissed.

DATED this 4th day of December, 2014.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN  
CAROLINE A. HOLIEN  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.