State of Wisconsin

Labor and Industry Review Commission

Peter Bayliss, Complainant **L&M Corrugated Container Corp.**, Respondent ERD Case No. CR202100553	**Fair Employment Decision**[1] **Dated and Mailed:** July 14, 2025 baylipe_err.doc:164

The decision of the administrative law judge is **reversed**. Accordingly, the commission issues the following:

ORDER

1. That the respondent shall cease and desist from discriminating against the complainant based upon his protected activity.

2. That the respondent shall offer the complainant reinstatement to a position substantially equivalent to the position he held prior to his discharge. This offer shall be in writing and shall be tendered by the respondent or an authorized agent. It shall provide reasonable notice of the time and place at which the complainant is to appear for work and shall allow the complainant a reasonable time to respond. Upon the complainant's acceptance of such position, the respondent shall afford him all seniority and benefits, if any, to which he would be entitled but for the respondent's unlawful discrimination, including sick leave and vacation credits.

3. That the respondent shall make the complainant whole for all losses in pay and benefits the complainant suffered by reason of its unlawful conduct by paying the

[1] **Appeal Rights**: See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, http://lirc.wisconsin.gov.

complainant the amount he would have earned as an employee had his employment not been terminated, from February 15, 2021, until such time as the complainant resumes employment with the respondent or would resume such employment but for his refusal of a valid offer of a substantially equivalent position. The back pay for the period shall be computed on a calendar quarterly basis with an offset for any interim earnings during each calendar quarter. Any unemployment compensation or welfare benefits received by the complainant during the above period shall not reduce the amount of back pay otherwise allowable, but shall be withheld by the respondent and paid to the Unemployment Insurance Reserve Fund or the applicable welfare agency. Additionally, the amount payable to the complainant after all statutory setoffs have been deducted shall be increased by interest at the rate of 12 percent simple. For each calendar quarter, interest on the net amount of back pay due (i.e., the amount of back pay due after set-off) shall be computed from the last day of each such calendar quarter to the day of payment. Pending any and all appeals from this Order, the total back pay will be the total of all such amounts.

4. That the respondent shall pay to the complainant reasonable attorney's fees and costs incurred in pursuing this matter in the total amount of $52,447. A check in that amount shall be made payable jointly to the complainant and his attorney, Christopher C. Fry, and delivered to Mr. Fry.

5. That within 60 days of the date this Order is issued,[2] the respondent shall comply with all terms of this Order and file with the commission a Compliance Report detailing the specific actions it has taken to comply with this Order. Pursuant to Wis. Stat. § 227.54, the institution of a proceeding for judicial review shall not stay enforcement of the commission decision unless a stay is ordered by the reviewing court. The commission will not pursue enforcement while a motion for such a stay is pending.

The Compliance Report shall be prepared using the "Compliance Report" form which has been provided with this decision. The respondent shall submit a copy of the Compliance Report to the complainant at the same time that it is submitted to the commission. Within 10 days from the date the copy of the Compliance Report is submitted to the complainant, the complainant shall file with the commission and serve on the respondent a response to the Compliance Report.

Notwithstanding any other actions a respondent may take in compliance with this Order, a failure to timely submit the Compliance Report required by this paragraph is a separate and distinct violation of this Order. The statutes provide that every day during which an employer fails to observe and comply with any order of the commission shall constitute a separate and distinct violation of the order and that, for

[2] For a discussion of the effective date of commission orders and an opposing view, see *Lorenz v. Woodman's Food Market*, ERD Case No. CR202002781 (LIRC Dec. 18, 2024).

each such violation, the employer shall forfeit not less than $10 nor more than $100 for each offense. *See* Wis. Stat. §§ 111.395, 103.005(11) and (12).

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

Procedural Posture

On March 15, 2021, the complainant filed a complaint with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development, alleging that the respondent discharged him in retaliation for threatening to file a wage claim, in violation of the Wisconsin Fair Employment Act. On September 20, 2021, an equal rights officer for the Division issued an initial determination finding probable cause to believe that discrimination occurred, and the matter was certified to a hearing on the merits.

On February 1, 2022, prior to any hearing, the respondent filed a motion to dismiss. The respondent argued, among other things, that the Division lacked jurisdiction over the matter because the complainant was a managerial employee and was not eligible to file a wage claim under Wis. Stat. § 109.03. On or about August 9, 2022,[3] the administrative law judge issued a decision denying the motion and concluding that the complainant was entitled to a hearing at which he could present evidence that the respondent believed he had engaged in or may engage in protected activity under the Wisconsin Fair Employment Act.

On March 21, 2023, a hearing was held on the merits of the complaint. Thereafter, on June 14, 2023, the respondent filed a second motion to dismiss. The arguments raised by the respondent in the second motion were essentially the same as those raised in the initial motion. This time, however, the administrative law judge issued a decision granting the motion and dismissing the complaint. The complainant has filed a petition for commission review of that decision.

[3] The administrative law judge's decision is undated, but was uploaded to the Division's internal website on August 9, 2022.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact

1. The respondent, L&M Corrugated Container Corp. (hereinafter "respondent"), is a corrugated packaging company. Steve Lopes is the president and CEO of the company. Lopes' son, Steven, is also involved in the business and is a co-owner.

2. The complainant, Peter Bayliss (hereinafter "complainant"), began working for the respondent in 2014 as an account executive, left briefly for other employment, and returned in late 2018 as a sales manager. As a sales manager, the complainant received a base salary of $200,000, plus bonuses. The bonuses were distributed annually and were based upon a calculation of the contribution margin (i.e., total sales minus variable costs) above the prior year's performance.

3. The complainant was given two performance reviews in 2019 and received primarily "excellent" ratings, along with a few "good" ratings.

4. The complainant was not eligible for and did not receive a bonus in 2019.

5. The complainant was required to attend numerous meetings during the course of his employment with the respondent. He occasionally missed a meeting or was late for a meeting due to personal or work obligations. On August 12, 2020, after the complainant missed a project meeting, the respondent's CEO, Steve Lopes, sent the complainant an email advising him that showing up late or missing meetings would not be tolerated.

6. The complainant attended the first day of the respondent's two-day annual sales meeting in late October or early November of 2020. However, he was about 10 minutes late for the second day of the meeting. As a consequence, the respondent would not permit the complainant to enter the meeting room.

7. The complainant believed he was entitled to a bonus in 2020 based upon his sales performance, but the respondent disagreed, contending that the complainant had not made the base amount required to be eligible for a bonus.

8. In January of 2021, the respondent notified the complainant that his salary would go up to $236,000 and that he would receive a bonus for 2021 if he qualified for it.

9. The complainant continued to request his bonus for 2020, but the respondent did not agree that the complainant was entitled to a bonus for that year based upon its calculations of the contribution margin.

10. On Friday, February 12, 2021, the complainant's attorney sent a letter by email to the respondent claiming that the complainant was owed approximately $43,940 in 2020 bonuses. In the letter the complainant's attorney stated that if the complainant was not paid the outstanding bonus money or provided with requested information about the contribution margin total for 2020 by February 22, 2021, "[he] will take further action to enforce his rights."

11. On the same day, February 12, 2021, the respondent sent an email to the complainant's attorney in response to his email in which it asked, "Did you advise your client of the consequences that come from having an attorney send an unjust demand letter to his employer?" The term "consequences" referred to possible termination of the complainant's employment, as well as potential legal consequences.

12. Thereafter the respondent spoke with its attorney about the matter. The respondent provided its attorney with a copy of the letter from the complainant's attorney and asked if it could fire the complainant. The respondent's attorney advised the respondent that it could discharge the complainant because he was not protected under Wisconsin's wage law, since he was in management and oversaw people.

13. On Monday, February 15, 2021, the respondent met with the complainant and told him he was discharged. The reason the respondent gave the complainant for the discharge was that the complainant was "not trustworthy."

14. The respondent discharged the complainant because he notified it he might file a wage claim or take other action to secure his rights to the bonuses he believed he was owed.

15. On March 15, 2021, a month after the complainant was discharged, he filed both a wage claim and a retaliation claim with the Division. On May 17, 2021, the Division issued a determination dismissing the wage claim for lack of jurisdiction, reasoning that the complainant was a manager and was not covered under Wis. Stat. § 109.03, the wage claim statute.

16. On October 4, 2021, the complainant began a new job as an account executive at a company called Buckeye Corrugated, Inc. at a salary of $150,000 a year, plus bonuses. In 2022 the complainant received less than $50,000 in bonuses and therefore did not exceed $200,000 in total earnings.

Conclusions of Law

1. The respondent discharged the complainant because it believed he intended to file a complaint or enforce a right under Wis. Stat. § 109.03, in violation of the Wisconsin Fair Employment Act.

Memorandum Opinion

The omnibus retaliation provision contained in the Wisconsin Fair Employment Act (hereinafter "WFEA"), makes it unlawful to discharge or otherwise discriminate against any individual because he or she files a complaint or attempts to enforce any right under a variety of separate statutes, including Wis. Stat. § 109.03, the wage claim statute. Wis. Stat. § 111.322(2m)(a). The WFEA also makes it unlawful to discharge or discriminate against any individual because the employer believes he or she engaged in or may engage in such activity. Wis. Stat. § 111.322(2m)(d).

The first question presented in this case is whether the anti-retaliation protections of the WFEA extend to an individual who is not actually covered under Wis. Stat. § 109.03. The commission concludes that they do.

In her decision, the administrative law judge cited an unpublished court of appeals decision, *Nicolai v. City of Whitehall*, 2011 WI App 99, 334 Wis. 2d 807, for the proposition that an employee's wage claim was properly dismissed because he worked in a managerial capacity and was therefore not protected by Wis. Stat. § 109.03.[4] Relying on that decision, the administrative law judge found that, where an individual is specifically excluded from the protections of the statute by definition, he has no right to assert that he is protected under the wage payment statute.

The claim that is before the commission at this time is the complainant's WFEA retaliation claim, not his claim for relief under the wage payment law. In order to state a retaliation claim under the WFEA, the complainant must establish that he or she engaged in some statutorily protected activity, meaning an activity that is protected by the WFEA. What is protected under the WFEA is an individual's right to file a complaint or otherwise attempt to enforce a right under one of the underlying statutes. Therefore, the administrative law judge's reliance on *Nicolai* was misplaced; *Nicolai* only addresses the protections of Wis. Stat. § 109.03, not the WFEA, and therefore has no bearing on the outcome of this case.

As stated above, the WFEA protects individuals who file complaints or attempt to enforce rights under one of several discrete statutes separate from the WFEA, including Wis. Stat. § 109.03, the wage payment statute, or whose employers believes they may do so. The law applies to "individuals," not just "employees." *See*,

[4] The wage payment statute covers "employees" and indicates that an "employee" does not include a person employed in a managerial capacity. Wis. Stat. § 109.03(5); Wis. Stat. § 109.01(1r). The statute does not define the term "managerial."

Wis. Stat. § 111.322(2m). It includes no requirement that the underlying complaint be meritorious, or even that the individual filing the complaint or attempting to enforce a right is ultimately determined to be covered by the statute in question. The legislature could have chosen to include those requirements, but it did not. It is a well-established rule of statutory interpretation that words should not be read into a statute that are not there: "One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning." *State v. Neill*, 2020 WI 15, ¶ 23, 390 Wis. 2d 248, 938 N.W.2d 521; *Fond Du Lac Cty. v. Town of Rosendale*, 149 Wis. 2d 326, 334, 440 N.W.2d 818 (Ct. App. 1989).

In addition to the fact that the statute should not be read as including additional requirements not referenced in the text, it must be noted that the WFEA is to be "liberally construed" in order to accomplish its purposes. Wis. Stat. § 111.31(3). In drafting the anti-retaliation provisions of the statute as it did, with broad application to "individuals" and without the types of limitations discussed above, the legislature clearly intended to encourage the reporting of suspected violations of the various omnibus statutes. The protections of the WFEA do not apply only where it is subsequently determined that the individual was covered under the underlying statute--a determination which might not be made until well after the fact--but apply to any situation where an individual files a complaint or attempts to enforce a right under one of the separately listed statutes, or where the employer believes he has or that he intends to do so. *See*, *Notaro v. Kotecki & Radtke, S.C.*, ERD Case No. 8902346 (LIRC July 14, 1993)("the coverage of the participation clause is 'exceptionally broad' and extends even to those who have filed false and malicious charges"). Consequently, the fact that the complainant was adjudged to not be covered under the wage payment law is not fatal to his claim of retaliation under the WFEA.

Having found that the complainant is entitled to the protections of the WFEA, notwithstanding the fact that he was found to not be covered under Wis. Stat. § 103.09, the next question to determine is whether the complainant was discharged in retaliation for his protected conduct. In order to establish a *prima facie* case of retaliation the complainant must show (1) that he engaged in statutorily protected activity; (2) that the respondent has taken an adverse employment action; and (3) that a causal connection exists between the two. *Frierson v. Ashea Industrial Systems*, ERD Case No. 8752356 (LIRC April 6, 1990).

For purposes of the statute, protected activity includes filing a complaint or attempting to enforce a right under Wis. Stat. § 103.09, the wage payment law. Wis. Stat. § 111.322(2m)(a). The complainant did not file a complaint until after he was discharged by the respondent, nor did he attempt to enforce a right prior to being discharged. Rather, as indicated above, the complainant's attorney sent the respondent an email notifying the respondent that the complainant believed he was owed bonus monies and that, if he did not receive the bonuses or additional

requested information related to the bonuses, he "would be taking action to enforce his rights." Therefore, while the complainant did not establish that he engaged in protected conduct under Wis. Stat. § 111.322(2m)(a), the respondent clearly had reason to believe that the complainant "may" file a complaint or attempt to enforce a right under the wage claim statute, as contemplated under Wis. Stat. § 111.322(2m)(d), given that the complainant's attorney specifically notified it this was the case. That the respondent believed the complainant intended to carry through with this threat is evidenced by the fact that it contacted its attorney to seek advice on how to proceed.

The final question, then, is whether the complainant has established a causal connection between his discharge and the respondent's belief that he intended to file a wage claim or take action to enforce his rights. The commission believes he has. The respondent responded to the complainant's attorney's statement that he might take action to enforce his rights with the following: "Did you advise your client of the consequences that come from having an attorney send an unjust demand letter to his employer?" That statement clearly conveys a threat of adverse action by the respondent based upon the complainant's demand for unpaid bonuses and his statement that he would take enforcement action to obtain them. Indeed, the respondent contacted its attorney and sent it a copy of the email, specifically asking whether it could discharge the complainant, and was advised that it could do so because the complainant's claim was not covered by the wage payment law. The complainant was then immediately discharged on the ground that he was "not trustworthy."

Notwithstanding the compelling evidence indicating discriminatory intent, the respondent has argued that it discharged the complainant for legitimate, performance based reasons. It maintains that the complainant had poor attendance, lied about having COVID, and was otherwise an unsatisfactory employee who was "on thin ice" by January of 2021. However, the complainant received only positive performance evaluations, never received any warnings about poor performance apart from a single caution about the need to be present and on time for staff meetings issued six months prior to the discharge, and was given a substantial salary increase a month prior to the discharge that was at least arguably based upon merit.[5] The lack of evidence to indicate that there was a performance based reason for the discharge, coupled with the timing of the discharge--coming immediately after the complainant notified the respondent that he was planning to take action to enforce his rights to unpaid bonuses--strongly suggests that the complainant would not have been discharged for performance reasons had he not

[5] The "salary and wage adjustment form" showing the pay increase indicates that it was given because of "merit." However, at the hearing the respondent testified that the form automatically prefills with the word "merit" and that the real reason for the salary increase was that it was trying to make the complainant "feel like he had a win." (Tr, at 131).

engaged in conduct protected under the WFEA. And indeed, any remaining doubts on this score are removed upon consideration of the fact that the respondent sent its attorney a copy of the email threatening action by the complainant to enforce his rights to unpaid bonuses and specifically asked its attorney if it could discharge the complainant. The timing of the discharge, coupled with the direct evidence of motive, warrants a conclusion that the respondent discharged the complainant because of his protected conduct.

For the reasons set forth above, the commission concludes that the complainant was eligible for coverage under the anti-retaliation provisions of the WFEA and that the respondent discharged him in violation of those provisions.

Attorney's fees and costs

The complainant is entitled to payment of his reasonable attorney's fees incurred in pursuing this matter. The complainant's attorney, Christopher C. Fry, has requested a total of $55,488[6] in fees and costs. The commission awards $52,447, for the reasons set forth herein.

As a preliminary matter, the respondent argues that it has been denied the opportunity to challenge the complainant's requested attorney's fees because the commission did not issue a proposed decision prior to requesting fee information. Therefore, the respondent contends, it has not been able to get a sense of whether or not the complainant has or has not succeeded on the ultimate issue. (respondent's brief, p. 2). The respondent further maintains the absence of a proposed decision resulted in a fundamental denial of due process. *Id.* The respondent's arguments on this point are without merit. The commission is authorized to award attorney's fees and is under no obligation to issue a proposed decision prior to doing so. Here, the commission notified the parties that it intended to issue a finding of discrimination. Given that there was only a single issue (discharge) and basis (retaliation) presented in this case, it is hard to imagine what additional information the respondent believed would be necessary in order to assess the extent of the complainant's success, nor has the respondent elaborated on that point. Further, notwithstanding the respondent's contention that it has been "hamstrung" from responding (respondent's brief, p. 2), the absence of a proposed decision has not prevented it from filing lengthy and detailed objections to the complainant's fee petition, all of which will be addressed herein.

In calculating reasonable attorney's fees, the most useful starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This figure is commonly referred to as the "lodestar" figure. *Hensley v. Eckerhardt*, 461 U.S. 424, 31 FEP Cases 1169 (1983).

[6] The complainant's request was for $55,487.96. However, the commission has rounded this, and all other cash amounts, to the nearest dollar.

Reasonable hourly rate: A reasonable fee is calculated according to the prevailing market rates in the relevant community. It is anticipated that, along with the fee petition, the attorney requesting payment will submit affidavits from other attorneys in the locality establishing that the requested rates are in line with those prevailing in the community for similar services for lawyers of comparable skill, experience and reputation. An hourly rate determined based on such affidavits is normally deemed to be reasonable. *Roytek v. Hutchinson Technology*, ERD Case No. 199903917 (LIRC Feb. 15, 2005).

Here, the complainant's attorney failed to submit affidavits from other attorneys in the locality, instead submitting only his own affidavit in support of his hourly fees, which ranged from $280 an hour at the beginning of the litigation, to $345 an hour at the end,[7] and those of his associates, which ranged from $190 to $220 an hour. The respondent argues that, in the absence of such affidavits, it would be reasonable to compensate the complainant's attorney at the rate of $220 an hour, the hourly rate the respondent's counsel claims to have charged its client in this matter, and to provide no compensation whatever for Mr. Fry's associates. However, while the presence of affidavits from other attorneys lends powerful support to a request for attorney's fees, the absence of those affidavits does not mean that no fees are payable or that the respondent may unilaterally decide what the fees should be. The commission has considerable experience in evaluating attorneys' fee requests and, while it has no direct knowledge about hourly rates charged in Dubuque, Iowa, where the complainant's attorney's firm is located, it is familiar with rates charged by attorneys with comparable experience practicing law in comparable sized cities in Wisconsin.

The complainant's attorney began practicing law in 2004 and had almost 20 years' of legal experience when he took on this case in 2021. Under those circumstances, the commission does not consider $280 to be an unreasonable hourly rate. By comparison, the commission recently awarded a $260 hourly rate to an attorney who began working on a discrimination case in 2021 with only one year's experience under his belt at the beginning of the litigation. *See*, *Lorenz v. Woodman's Food Market*, ERD Case No. CR202002781 (LIRC Dec. 18, 2024). It would be difficult to say that 16 additional years of legal experience is not worth an additional $20 an hour, even considering the fact that Attorney Fry works in a different and smaller locality than the attorney in the *Lorenz* matter, who is based in Milwaukee. In another recent case, the commission awarded an hourly fee of $350 to a Kenosha attorney with approximately ten years' legal experience. That rate increased over the course of the three-year litigation to $400. *See*, *Swift v. Swift Transportation Co.*

[7] Specifically, the complainant's attorney's billing statement indicates that he billed at an hourly rate of $280 when he first began his representation of the complainant in January of 2021, raising his fees to $290 in July of 2021, then to $320 in July of 2022, $335 in July of 2023, and finally to $345 in July of 2024.

of Arizona, LLC, ERD Case No. CR202002534 (LIRC April 15, 2025). While Kenosha, Wisconsin and Dubuque, Iowa are not identical in size, both are small cities whose attorneys tend to bill at hourly rates that are somewhat lower than those billed in the larger metropolitan areas of Milwaukee or Madison. If an hourly rate of $350 to $400 over the course of three years is considered reasonable for an attorney from a comparable sized community with ten years' less experience than the attorney in this case, then the commission sees little reason to question the reasonableness of an hourly rate of $280 to $345 over the course of four years for the complainant's attorney.

The question of what hourly rates are reasonable for Attorney Fry's associates appears at first glance to be somewhat more difficult, since the complainant's attorney has failed to provide any information whatever about these individuals-- the commission has no idea when they began practicing law or what the extent of their experience may be. The complainant's attorney's billing statement shows only the following:

- Thomas M. Bright performed services in February through May of 2021 at a requested hourly rate of $190.

- Alyssa M. Carlson performed services in February of 2022 at a requested hourly rate of $200.

- Ian P. Bartelt performed services in June of 2024 at a requested hourly rate of $220.

However, even assuming these attorneys were brand new law school graduates, with the least amount of legal experience possible, an hourly rate of $190 in the year 2021 would not be unreasonable. Similarly, an hourly rate of $200 in the year 2022 or an hourly rate of $220 in 2024, both of which reflect a modest annual increase of $10 an hour over the initial $190 rate, are reasonable rates, even for attorneys with minimal experience. Therefore, the hourly rates requested for attorneys Bright, Carlson, and Bartelt are also approved.

Amount of time reasonably expended: For purposes of determining the "lodestar" figure, the attorney fee applicant bears the burden of documenting the appropriate hours expended. Counsel should at least identify the general subject matter of time expenditures. *Olson v. Phillips Plating*, ERD Case No. 8630829 (LIRC Feb. 11, 1992).

The commission has reviewed the complainant's attorney's fee statement and concludes that some of the items contained therein must be entirely removed or, at least, reduced. The complainant filed both a wage claim under Wis. Stat. § 109.03 and a retaliation claim under the Wisconsin Fair Employment Act. Only work

related to the latter is compensable in conjunction with these proceedings, as the commission has traditionally disallowed time spent on matters outside of the case that is before the Equal Rights Division. *See*, *Fields v. Cardinal TG Co.*, ERD Case No. 199702574 (LIRC Feb. 16, 2001). Therefore, the commission will not require payment of any items billed prior to February 17, 2021, at which point the complainant's attorney first began to work on the complainant's retaliation claim. In addition, the commission notes that a number of specific time entries contained in the complainant's attorney's fee statement apply only to the wage claim and not to the retaliation claim and are, therefore, similarly disallowed. Those items are dated February 26, 2021, March 23, 2021, April 14, 2021, and May 4, 6, 10, 13, 15, and 17, 2021.

In addition to the above, there are many entries in the complainant's attorney's time sheet that reflect work for both the retaliation claim, which is compensable, and the wage claim, which is not. It is not possible to determine exactly how much time was spent on each. Given that, the commission considers it most equitable to split those entries in half and order reimbursement to the complainant's counsel for half of each. Those entries are, as follows: February 22 and 23, 2021, March 3, 9, 10, 12, and 22, 2021, April 12, 13, 18, 19, 26, 27, 28, and 29, 2021, and May 25 and 27, 2021.

The commission's review of the complainant's attorney's fee statement also indicates that the complainant's attorney billed time on April 11, 2023, for work spent on the complainant's unemployment insurance hearing and that he billed time on August 25 and 26 of 2021, and again on September 3 of 2021, to advise the complainant on his non-compete agreement. For the same reason, these entries are also disallowed.

The respondent additionally argues for a reduction in the amounts awarded for entries that contain the words "attention to" or "confer," on the grounds that these are nonspecific. Here, the commission disagrees. The phrase "attention to" indicates that the complainant's attorney was reading or reviewing a document, while "conferring with," even in the absence of a subject, clearly suggests that the complainant's attorney was conferring with another attorney in the firm. Indeed, in some instances there is a corresponding entry from another attorney at the firm indicating that he or she is "conferring" with Attorney Fry at the same time and regarding the same issue. Thus, the commission has experienced no confusion evaluating these entries and sees no reason they should be disallowed.

In a similar vein, the respondent suggests that the use of "block billing" is disallowed and that the complainant's attorney should not receive full compensation for any entries in which he has engaged in this practice. Again, the commission disagrees. Courts that have addressed the issue of block billing have generally considered it allowable. In *Farfaras v. Citizens Bank & Trust*, 433 F.3d 558, 2006

U.S. App. LEXIS 571, the 7th Circuit Court of Appeals stated that, "although 'block billing' does not provide the best possible description of attorneys' fees, it is not a prohibited practice." To the contrary, when an entry, though block billed, generally represents related and compensable tasks, the block billing is relatively harmless. *Jimenez v. Illini Precast, LLC,* 2022 U.S. Dist. LEXIS 175753*,* 2022 WL 4533856*, citing Alberth v. S. Lakes Plumbing & Heating, Inc.*, No. 19-CV-62, 2021 U.S. Dist. LEXIS 124106, 2021 WL 2779038, at 5 (E.D. Wis. July 2, 2021). "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." *N. Am. Specialty Flooring, Inc. v. Humane Mfg. Co.*, LLC., 2024 U.S. Dist. LEXIS 49952, 2024 WL 1194098, citing *Fox v. Vice*, 563 U.S. 826, 838, 131 S. Ct. 2205, 180 L. Ed. 2d 45 (2011).

While in this case the complainant's attorney did engage in the practice of "block billing," most of the entries in which block billing was used involve only two or three tasks which seem to be generally interconnected. For example:

> 3/15/2023 Telephone call to Pete Bayliss concerning Defendant's witness and exhibit lists; prepare outline for examination of Al Cianci. 0.8
>
> 5/25/2023 Continue preparation of post-hearing brief; exchange e-mail messages with Attorney Daniel Finerty concerning additional errors in transcript. 3.7
>
> 7/18/2023 Continue preparation of reply brief; review and revise reply brief; prepare e-mail message to Pete Bayliss concerning reply brief. 3.8
>
> 12/14/2023 Telephone call and leave message for Pete Bayliss concerning status of decision on retaliation complaint; prepare email message to Mr. Bayliss concerning same. 0.4
>
> 6/19/2024 Research Wisconsin Employment Rights Division caselaw; researching the meaning of "attempt," outline response to Respondent Opposition Brief; draft Reply brief. 5.9

Although the commission agrees with the respondent that more specificity would be helpful in some instances, the fact remains that the amounts charged appear to be reasonably related to the litigation as a whole and reasonable in terms of the amount of time expended. They, therefore, will not be reduced as a consequence of the complainant's attorney's use of block billing.

The respondent makes two additional arguments in favor of fee reduction. First, it argues that the complainant "purloined" a number of company owned financial

documents that he attempted to introduce at hearing, in violation of a promise he made to the respondent that he would return all such documents at his termination. The respondent maintains that the complainant's attorney fee request includes $1,312 related to the documents at issue[8] and that this should be disallowed. However, whether or not the complainant was contractually entitled to retain company documents is not an issue before the commission. In analyzing the question of the amount of reasonable attorney's fees to order, the commission considers the evidence the complainant presented in support of his case and how much time his presentation of the evidence added to the litigation. Where the documents at issue were introduced at the hearing and admitted as hearing exhibits--albeit under a protective order--the commission sees no reasonable basis to conclude that the complainant's attorney should not be compensated for the time he spent in connection with the presentation of those documents.

Finally, the respondent contends that on the last page of the invoice an additional charge was added in the amount of $2,671. The respondent states that, since this charge was a "balance forwarded," it appears to have been double charged and should be removed. The commission agrees that it is unclear what the $2,671 amount is meant to represent or how it factors into the complainant's attorney's billing. However, the commission has avoided the need to resolve this question because it has calculated the allowable fee award by adding up the items for which, after excluding the items referenced on page 12 of this decision, the complainant's attorney is entitled to be compensated. The result is as follows:

Attorney Fry	5.05 hours at $280 =	$ 1,414
	6.20 hours at $290 =	$ 1,798
	75.1 hours at $320 =	$24,032
	25.1 hours at $335 =	$ 8,409
	9.60 hours at $345 =	$ 3,312
Attorney Bright	2.60 hours at $190 =	$ 494
Attorney Carlson	15.9 hours at $200 =	$ 3,180
Attorney Bartelt	30.6 hours at $220 =	$ 6,732
		$49,371

Costs: In addition to the above, the complainant's attorney has also requested $3,076 in costs for court reporting fees, mileage and parking. The respondent has not challenged the reasonableness of the requested costs, and the commission believes they are reasonable. Therefore, they are allowed.

[8] The respondent has not specified which entries in the complainant's fee statement it has in mind or how it arrived at the $1,312 figure.

NOTE: The commission did not confer with the administrative law judge who issued the decision prior to reversing. The commission's reversal is not based upon a differing assessment of witness credibility, but is because the commission reached a different legal conclusion when applying the law to essentially the same set of facts as that found by the administrative law judge. While the administrative law judge's decision contains a more detailed set of facts regarding the issues surrounding the calculation of the disputed bonus, the commission considers it immaterial to explore why the parties disagreed about the bonus, the salient fact being that the complainant notified the respondent he intended to file a wage claim and was discharged as a result.

cc: Attorney Christopher C. Fry
Attorney Daniel Finerty