COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

23-P-897

TAMMI LAWRENCE

vs.

SCHOOL COMMITTEE OF SOMERSET & another[1] (and a consolidated case[2]).

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Claiming that they were not compensated for time spent during lunch breaks when they were required to stay at their schools, two school nurses brought Wage Act claims against the School Committee of Somerset (committee) and town of Somerset. A Superior Court judge granted summary judgments in favor of the defendants after concluding there was no genuine dispute of

[1] Town of Somerset.

[2] Susan Bertrand & another vs. School Committee of Somerset & others. Claudine Lapriore was a plaintiff in the Superior Court action and the Commonwealth of Massachusetts was a defendant; however, neither is a party to this appeal.

material fact about whether the nurses had been paid for this time.[3] We affirm.

Background. The plaintiffs, Susan Bertrand and Tammi Lawrence, are school nurses employed by the town since 2003 and 2004, respectively. They are salaried employees who have received payment on a biweekly basis throughout their employment. They are also members of the Somerset Teachers Association, which entered into a series of collective bargaining agreements (CBAs) with the committee.

For years, school nurses in Somerset complained that they had to stay at their schools during their lunch breaks. The 2014-2017 CBA provided that even though nurses were entitled to "a 30 minute lunch period," they had to "remain in their assigned school to be on call in case of emergencies." Following negotiations, the 2017-2020 CBA was modified to provide that nurses would have "a 30-minute uninterrupted lunch period" and "must remain in their assigned school to the extent required by law to be on call in case of emergencies." Both CBAs provided that the length of the school day "shall not exceed six (6) hours and fifty (50) minutes."

[3] The nurses' cases were consolidated in the Superior Court. The two nurses filed separate appeals that were consolidated by order of this court.

In 2018, the teachers association filed a grievance with the committee, arguing that it violated the 2017-2020 CBA by denying the nurses the ability to leave their respective buildings during their lunch time. After review, an arbitrator concluded that the committee violated the 2017-2020 CBA and ordered the committee to "make nurses whole for all those lunch periods during which the School Committee required them to remain in their assigned schools during their lunch periods retroactive to the start of school year 2018-2019." Neither party asked the arbitrator to address whether the nurses were paid for their lunch breaks.

In response to the arbitrator's order that the nurses be made whole, the teachers association and the committee agreed that the committee would issue to each of the affected nurses a monetary payment based on an hourly pay rate calculated from a work day of 6.83 hours, or six hours and fifty minutes. The plaintiffs objected to the calculation of this payment and submitted a position statement arguing that the nurses' hourly pay rate should have been based on a work day of 6.33 hours, or six hours and twenty minutes, and that not all of the affected days were included. They subsequently filed complaints in Superior Court claiming that the committee and the town violated the Wage Act, G. L. c. 149, §§ 148, 148B, 150, by failing to pay

wages for the unpaid lunch hours.[4] Following consolidation, the defendants moved for summary judgment. In a thoughtful and concise memorandum of decision, the judge allowed the motion, concluding that "the undisputed record shows that the defendants paid the plaintiffs for all of the time they worked, including meal breaks, when they were not permitted to leave the building," and that the documents relied on by the plaintiffs to establish a genuine issue of material fact were "solely based on their own personal opinions and beliefs."

Standard of review. We review the grant of summary judgment de novo. See Le Fort Enters., Inc. v. Lantern 18, LLC, 491 Mass. 144, 149 (2023). "We view the evidence in the light most favorable to the nonmoving party." Federal Nat'l Mtge. Ass'n v. Hendricks, 463 Mass. 635, 637 (2012). "Summary judgment is appropriate where there is no material issue of fact in dispute, and the moving party is entitled to judgment as a matter of law." Berry v. Commerce Ins. Co., 488 Mass. 633, 636 (2021), citing Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). To succeed, a moving party "may satisfy [its] burden of demonstrating the absence of a triable issue either by submitting evidence that negates an essential element of the

[4] The plaintiffs also claimed breach of contract and unjust enrichment, but did not oppose the defendants' motion for summary judgment on those claims.

opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of [her] case at trial." Petrell v. Shaw, 453 Mass. 377, 381 (2009).

Discussion. Under the Wage Act, "an employee may recover earned wages that an employer has withheld." Wessell v. Mink Brook Assocs., Inc., 87 Mass. App. Ct. 747, 755 (2015), citing G. L. c. 149, § 148. As the limitation period for the plaintiffs' Wage Act claims is three years, G. L. c. 149, § 150, and the earliest of the plaintiffs' complaints was filed on June 13, 2019, the key issue in this case is whether the plaintiffs were paid for their lunch breaks between June 13, 2016, and January 18, 2020, the date of the arbitrator's decision.

The judge correctly concluded that the plaintiffs' payroll records demonstrate the absence of a triable issue. Each of the two CBAs in effect during this period defined the length of the school day as not exceeding six hours and fifty minutes. Although the plaintiffs allege that they were paid for only six hours and twenty minutes each school day, their payroll records show that, throughout the relevant period, they were consistently paid for seventy hours of work on a biweekly basis. That equates to seven hours per working day, ten minutes more than the required length of the school day according to the

CBAs.[5] This evidence established that the plaintiffs were paid for their lunch breaks, negating an essential element of their Wage Act claims.[6]

The plaintiffs challenge the payroll record evidence on a number of grounds, but none of their arguments is availing. First, they argue that the records are ambiguous and unreliable because some list "0.00" under the hours category or were left blank. However, all the records they point to were dated between 2012 and 2015 and therefore fall outside of the relevant time period. Second, the plaintiffs argue for the first time on appeal that the payroll records do not qualify as "a suitable pay slip" under the Wage Act because they fail to show an "hourly rate." See G. L. c. 149, § 148. Because this argument was not raised in the Superior Court, we decline to address it. See Trapp v. Roden, 473 Mass. 210, 220 n.12 (2015) ("Issues not

[5] The plaintiffs argue that it is unclear whether the term "school day" includes the "duty free lunch period" required by the 2017-2020 CBA. This issue is immaterial because the plaintiffs' payroll records show they were paid seven hours per day, which is longer than the "school day" defined by the CBA, and the plaintiffs do not allege that they worked more than seven hours per day.

[6] Because the payroll record evidence was sufficient to satisfy the defendants' burden of demonstrating the absence of a triable issue, we do not consider their alternative argument that, because the plaintiffs are salaried employees, it should be presumed that their regular compensation included compensation for meal breaks in the absence of any contrary evidence.

raised in the trial court are considered waived on appeal"). Third, the plaintiffs argue that because neither the biweekly pay amount nor the number of hours worked changed on the payroll records following the arbitrator's decision, it can be inferred that even after January 2020 the defendants continued to violate the Wage Act by failing to compensate the nurses for their lunch breaks. This argument fails because the plaintiffs did not dispute in the Superior Court that the prohibited practice ceased after the arbitrator's decision and that nurses were no longer required to remain in their assigned schools during their lunch breaks.

In response to the payroll record evidence, the plaintiffs have not set forth "specific facts showing that there is a genuine issue for trial" (citation omitted). Kourouvacilis, 410 Mass. at 716. See Mass. R. Civ. P. 56 (e), 365 Mass. 824 (1974). The plaintiffs rely on their own affidavits submitted in opposition to summary judgment, but those materials are insufficient to establish a factual dispute "that would warrant submission of its case to a jury." Ng Bros. Constr. v. Cranney, 436 Mass. 638, 645 (2002). The affidavits rest on conclusory assertions and the plaintiffs' beliefs, not specific facts, and cite only earlier complaints and e-mail correspondence with committee representatives in which the plaintiffs similarly

claimed that they were not paid for their lunches. A party opposing summary judgment cannot rest on "mere assertions of disputed facts," past or present. Green v. Zoning Bd. of Appeals of Southborough, 96 Mass. App. Ct. 126, 133 (2019), quoting LaLonde v. Eissner, 405 Mass. 207, 209 (1989).

For these reasons, summary judgment was properly granted in favor of the defendants.[7]

Judgments entered June 8, 2023, affirmed.

By the Court (Milkey, Hodgens & Toone, JJ.[8]),

Clerk

Entered: July 5, 2024.

[7] The parties' requests for attorney's fees and costs are denied.

[8] The panelists are listed in order of seniority.