

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ROGER LEHOUX	*	
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
SERMATECH INTERNATIONAL, INC.,	*	CIVIL NO.
	*	
PRAXAIR SURFACE TECHNOLOGIES, INC.	*	
	*	
& PRAXAIR, INC.	*	
	*	
Defendants.	*	

**PLAINTIFF’S COMPLAINT
AND DEMAND FOR JURY TRIAL
INJUNCTIVE RELIEF SOUGHT**

Plaintiff Roger Lehoux, by and through counsel hereby complains against Defendants Sermatech International, Inc.; Praxair Surface Technologies, Inc.; and Praxair, Inc. (“Defendants”) as follows:

JURISDICTION AND PARTIES

1. This action arises under the Maine Whistleblowers’ Protection Act (“MWPA”), 26 M.R.S.A. § 831 *et seq.* and the Maine Human Rights Act (MHRA), 5 M.R.S.A. § 4551 *et seq.*
2. Defendant Sermatech International, Inc. is a Pennsylvania corporation with its principal place of business in Pennsylvania.
3. Defendant Praxair Surface Technologies, Inc. is a Delaware corporation with its principal place of business in Indiana.
4. Defendant Praxair, Inc. is a Delaware corporation with its principal place of

business in Connecticut.

5. Defendant Praxair Surface Technologies, Inc. is a successor in interest to Sermatech International, Inc.

6. Defendant Praxair, Inc. is a successor in interest to Sermatech International, Inc.

7. At all relevant times, the Defendants Praxair Surface Technologies, Inc. and Praxair, Inc. have operated as an integrated enterprise. Upon information and belief, these Defendants have common ownership and management; they exercise centralized control of labor relations; and their operations are interrelated.

8. Lehoux is a citizen of the United States and State of Maine who resides in the Town of Saco.

9. Plaintiff and Defendants are citizens of different states for purposes of 28 U.S.C. § 1332.

10. The matter in controversy in this case exceeds the sum of \$75,000.

11. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332.

12. On or about September 8, 2009, Lehoux filed a Charge of Discrimination with the Maine Human Rights Commission ("MHRC").

13. On or about April 27, 2010, the MHRC issued a "Right to Sue" letter to Lehoux pursuant to 5 M.R.S.A. § 4612.

14. Plaintiff has exhausted all administrative remedies.

15. All of the discriminatory practices alleged herein were committed within the State of Maine, primarily in York County.

16. Defendants are subject to the jurisdiction of this Court.

17. This action properly lies in the District of Maine pursuant to 28 U.S.C. § 1391(b) because the claims arose in this judicial district.

18. For the calendar year 2009, Defendants employed more than 500 employees in each of 20 or more calendar weeks.

19. For the calendar year 2010, Defendants employed more than 500 employees in each of 20 or more calendar weeks.

20. At all material times, Defendants employed Plaintiff within the meaning of the MWPA.

JURY TRIAL DEMAND

21. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all issues triable of right by jury.

STATEMENT OF FACTS

22. Lehoux began working at Defendants' Biddeford facility on or about November 6, 2007 as a temporary employee.

23. Lehoux performed his work well and was hired by Defendants as a permanent employee on February 4, 2008 working as a plasma sprayer.

24. Prior to his hire by Defendants, Lehoux worked for years at Pratt & Whitney prepping for a department which performed the same type of manufacturing processes and producing aircraft parts. Therefore, Lehoux came to Defendants with significant knowledge of the manufacturing process and the dangers inherent in the machines and materials used at Defendants' facility.

25. Almost immediately after starting work for Defendants, Lehoux witnessed manufacturing practices that caused him significant concerns. He would spend the last year of

his employment attempting to convince Defendants' managers to address these employee safety and product quality issues.

26. One of the most severe and pervasive issues which Lehoux complained about during his employment with Defendants was the significant amount of dust which was consistently ejected from the Defendants' grit blasters due to inappropriate modifications made to these machines by employees and managers in order to increase productivity.

27. Lehoux witnessed that Defendants' employees and managers would cut off the ends of the sleeves that were used to access the inside of the grit blasters. The grit blasters were designed with intact gloves so that air and dust would not escape from the blasting cabinets during use.

28. When the sleeves were cut, the employees using the cabinets were able to work more quickly and increase production as demanded by management, but this defeated the design of the equipment as a sealed cabinet and allowed significant dust from the blasting cabinets to escape into the air surrounding the blasting cabinets.

29. Lehoux noticed that the dust was not being controlled, causing significant exposure by him and other employees.

30. Dust would also settle on parts in the abutting paint department that had been prepped for anti-corrosive painting.

31. The dust that was released from the blasting cabinets contained silica, crystallized quartz.

32. Lehoux was concerned about the fact that the dust that was released from the blasting cabinets contained silica, crystallized quartz, and black carbon and that inhaling this dust created a danger of Silicosis and other adverse health effects for himself and his coworkers.

33. Defendants did not provide Lehoux or the other employees with any notice regarding the potential dangers of the dust.

34. The parts in question that were being covered in grit blaster dust would be given their anti-corrosive painting after receiving a layer of the dust from the grit blasters.

35. Lehoux was concerned that the aircraft parts were likely being given a defective anti-corrosive painting since the parts were allowed to sit in the open and collect dust before being painted, contrary to FAA rules, regulations, and requirements, that a defectively coated part that was installed in an aircraft could potentially lead to a tragic malfunction, including but not limited to an accident resulting in death and serious injury to aircraft passengers and others.

36. Mr. Lehoux became even more concerned about the effect of the dust on the anti-corrosive painted parts when customers from outside of the company concluded that some of the anti-corrosive painted parts from Defendants were defective.

37. Mr. Lehoux raised his concerns with his coworkers and with managers Don Bergeron, Environmental Health and Safety (“EHS”) Manager Steve Conner, and later, another manager named Brent Pettegrow.

38. Lehoux witnessed Bergeron cutting the sleeves and replacing uncut sleeves with cut sleeves and also witnessed Bergeron tell employees to use the grit blasters without the sleeves so as to increase their production.

39. Lehoux repeatedly expressed his concerns about the modification of the grit blasters and the dust to Bergeron and Conner but this only made them angry.

40. Defendants’ managers did not address Lehoux’s concerns.

41. Lehoux went as far as providing a printout and internet link to a specific training video to Conner and requested that Conner make the handout and video available for viewing to

any workers operating the grit blasters.

42. Lehoux believed that Defendants had an obligation to advise its employees of the potential harms associated with exposure to the chemicals that were being turned to dust in the grit blasters and then being released into the work environment.

43. Conner failed to address the problem or take any action with regard to the grit blasters and the dust. Conner also failed to notify the employees of the potential harms associated with the dust.

44. On or about March 20, 2009, less than two weeks before his termination, Lehoux also brought his concerns about the modified grit blasters and the dust to a manager named Brent Pettegrow in the context of a training put on by Pettegrow to address the fact that some aircraft parts being sent out by Defendants were failing inspection and being sent back.

45. Since the training was being held, in part, to address the failing aircraft parts, Lehoux brought up the fact that the modification of the grit blasters was leading to significant amounts of dust in the air around the grit blasters and dust settling on parts that had been prepped for anti-corrosive painting but were inadequately protected from dust contamination prior to anti-corrosive painting.

46. Lehoux explained to Pettegrow that this practice was likely leading to defective parts and was contrary to FAA rules, regulations, and requirements and that the practice would continue until someone intervened and required supervisor Bergeron to stop the practice.

47. Throughout his employment with Defendants, Lehoux also complained to management that fumes and dust were being released from pit furnaces into the building.

48. Lehoux had to evacuate his work area on a regular basis, as often as once per week, due to these fumes. The fumes were an issue because the company was not properly

venting the furnaces in accordance with OSHA regulations.

49. Lehoux and others tried to use fans to protect themselves from the toxic odors and furnace dust but the fans were often not adequate.

50. A number of chemicals were used in the pit furnace process, including but not limited to chlorine, and the fumes and dust produced by the furnace and pulled into the work area were sufficiently noxious that they would force Lehoux and others to evacuate the building.

51. In January 2009 Lehoux and his co-worker, Cyr, both had to evacuate the work shop areas due to fumes. Lehoux and Cyr both had headaches, eye and nasal irritation from the fumes. Lehoux reported this to Bergeron who, in turn, reported it to Conner.

52. During this time, Conner indicated that he had made a purchase order request to Defendants' upper management for an adequate furnace exhaust system that would cost approximately \$30,000 but that upper management had rejected his purchase order request. Conner indicated to Lehoux that he was very disappointed that upper management had denied the recommendation of their EHS Officer.

53. On March 31, 2009, Lehoux was terminated by Defendants in an alleged layoff of one.

54. Lehoux was informed by Defendants' human resources department of his termination and told that he was being terminated due to "lack of work".

55. Lehoux knew that there was no such "lack of work" and suspected immediately that he had been terminated in connection with his ongoing complaints about employee safety and the failure of Defendants to comply with FAA rules, regulations, and requirements.

56. The reasons given by Defendants for Lehoux's termination are pretexts. In fact, there was a backlog of plasma spray work at this time as evidenced by wagons in the plasma

department full of parts waiting to be plasma sprayed; a need to prioritize work orders in order to take care of the ones that were the most overdue; complaints from customers about delay in provision of plasma sprayed parts; and employees from other areas coming over to assist the plasma department because the plasma department employees were struggling to keep up with parts prepping, finishing, and meeting shipping demands. There was no basis for or need for a layoff.

57. On or about April 3, 2009, Lehoux had breakfast with Cyr. Cyr told Lehoux that there had been a severe chlorine cloud from the pit furnaces the night before and that Defendants' supervisor, White, had said to Cyr that he was glad that Lehoux was no longer there to complain about the fumes.

58. In May 2009, OSHA Investigator Harold Lewis made a visit to the Defendants' facility where he inspected the operations and interviewed a number of employees and managers.

59. When Lewis interviewed Conner in connection with OSHA's investigation of Mr. Lehoux's termination, Conner conceded that the cutting of the grit blaster sleeves was an ongoing problem and that he was aware of the problem.

60. During his onsite visit, Lewis examined the cabinets and found that two grit blaster cabinets had no sleeves. The employees were using rubber or vinyl gloves instead. Per Lewis' observations, these gloves provided insufficient protection for the employee.

61. Also, Lewis found that pieces of rubber or vinyl from the gloves came off on to the airplane parts and tainted them.

62. Lewis found that the parts sitting near the blasting cabinets were covered with dust and debris.

63. Lewis also said that while parts prepped for coating were supposed to be covered

if they were sitting out more than two hours this was not being done and, indeed, the supervisors did not even know that they were supposed to cover the parts.

64. Defendants' own Quality Control Manager, Mahoney, also conceded to Lewis that the cutting of the gloves was an ongoing problem.

65. An employee interviewed by Lewis during his investigation confirmed Lehoux's testimony and said that they took the sleeves off of the blasting cabinets so that they could increase production. Without the sleeves, it was easier to handle small parts and it was quicker. This employee said that the supervisor, Bergeron, condoned the practice.

66. Lewis asked Conner about the furnace fume/dust issue. Conner conceded that this had been a problem during the time that Lehoux was employed by Defendants but that the issue had been finally remedied in March 2009. Conner's statement was contradicted by employees who told Lewis that fumes/dust from the furnace continued to be an issue as of the time of Lewis' May 2009 visit to the facility

67. Lewis also interviewed an employee who said that Lehoux was the only employee that followed the rules and that Bergeron set production goals so high that he knew employees could not meet them without cutting corners, like by cutting off the sleeves to the blasting cabinets.

68. Lewis also interviewed employees and managers who confirmed that Lehoux was the employee who was willing to speak up about safety and production quality issues and assumed that Lehoux had been terminated because of his protected complaints.

69. On July 31, 2009, OSHA conducted another onsite inspection of the Defendants' facility and subsequently cited Defendants with four "serious" violations of OSHA regulations.

70. The findings of Lewis and the July 2009 OSHA investigation corroborate that

Lehoux was engaged in protected activity for purposes of the MWPA while employed by Defendants when he complained about practices that 1) he believed violated OSHA regulations; 2) created serious health risks for employees, 3) violated FAA rules and regulations, and 4) were leading to defective aircraft parts that could potentially lead to a tragic aircraft accident.

71. The timing of the Plaintiff's protected activity and the adverse employment actions in this case evidence a causal connection between the protected activity and the adverse employment actions.

72. Defendants' managers exhibited retaliatory animus towards the Plaintiff in connection with the Plaintiff's engagement in protected activity under the MWPA.

73. Lehoux was terminated from his employment with Defendants because he engaged in protected activity under the MWPA and his protected activity was a motivating factor in Defendants' decision to terminate Lehoux's employment.

74. Defendants unlawfully discriminated against Plaintiff with malice or with reckless indifference to his state and federally protected rights.

75. Defendants' conduct constitutes knowing and willful violations of Plaintiff's rights.

76. As a result of Defendants' unlawful discrimination against Plaintiff, he has suffered damages including but not limited to lost wages, lost benefits, loss of enjoyment of life, inconvenience, injury to reputation, injury to career, and other pecuniary and non-pecuniary losses.

77. Plaintiff has no plain, adequate, or complete remedy at law to fully redress the wrongs alleged, and will continue to suffer irreparable injury from his treatment by Defendants unless Defendants are enjoined by this court.

COUNT I: MHRA & MWPA

78. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-77 as if fully set forth herein.

79. Defendants violated Mr. Lehoux's rights under the MHRA when they terminated him because he engaged in protected activity under the MWPA.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that the Court grant the following relief:

- (a) Enter Judgment in his favor;
- (b) Declare the conduct engaged in by Defendants to be in violation of Plaintiff's rights;
- (c) Enjoin Defendants, their agents, successors, employees, and those acting in concert with Defendants from continuing to violate the rights of Plaintiff;
- (d) Order Defendants to employ Plaintiff in his former position;
- (e) Award Plaintiff equitable-relief for back pay, benefits and prejudgment interest;
- (f) Award Plaintiff compensatory damages in an amount to be determined at trial of this matter;
- (g) Award Plaintiff punitive damages in an amount to be determined at trial of this matter;
- (h) Award Plaintiff nominal damages;
- (i) Award Plaintiff attorney's fees, including legal expenses, and costs;
- (j) Award Plaintiff prejudgment interest;
- (k) Permanently enjoin Defendants from engaging in any employment practice which discriminates on the basis of an employee's engagement in protected activity under the MHRA

or MWPA;

(l) Require that the Defendants' president and/or chief executive officer mail a letter to all employees of Defendants notifying them of the verdict against them and stating that the Defendants will not tolerate discrimination or retaliation in the future;

(m) Require that the Defendants post a notice in all of its workplaces of the verdict and a copy of the Court's order for injunctive relief;

(n) Require that the Defendants train all management level employees about the illegality of discrimination and retaliation against employees in connection with engaging in activity protected by MWPA and/or MHRA;

(o) Require that the Defendants place a document in Plaintiff's personnel file which explains that the Defendants terminated him and otherwise discriminated against him in retaliation for engaging in activity protected by the MWPA and MHRA; and

(p) Grant to Plaintiffs such other and further relief as may be just and proper.

Dated: March 28, 2011

/s/ Chad T. Hansen
Chad T. Hansen, Esq.

/s/ Peter L. Thompson
Peter L. Thompson, Esq.

/s/ Allison G. Gray, Esq.
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