

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

Shelly Duggan, et al

SUPERIOR COURT
217-2021-CV-00056

v.

State of New Hampshire
New Hampshire Liquor Commission

**PETITION FOR DECLARATORY JUDGMENT,
LIQUOR STORE EMPLOYEES WORK ON WEEKEND AND HOLIDAYS, REQUEST
FOR PERMANENT INJUNCTIVE AND OTHER RELIEF**

NOW COMES, Shelly Duggan and Jacob Gorecki, by and through their attorneys, Milner and Krupski, PLLC and petitions this Honorable Court for Declaratory Judgment, to Request Permanent Injunctive and Other Relief.

1. This action is brought by Shelly Duggan and Jacob Gorecki to seek preliminary and permanent injunctive relief from being required to work on Sundays and/or holidays in accordance with RSA 177:5.

I. PARTIES

3. The Petitioners, Shelly Duggan and Jacob Gorecki, are New Hampshire Liquor Commission full-time employees, who work at State liquor stores and hold the positions of Retail Store Manager III. Shelly Duggan has a principle place of residence at 14 Custom Street, Nashua NH 03062 and works at Liquor Store 30 located at Granite Town Plaza, Milford NH, 03055. Jacob Gorecki has a principle place of residence at 67 Pebble Hill Road Swanzee NH, 03446 and works at Liquor Store 48 at 849 Brattleboro Rd., Hindsdale, NH 03451.

4. The Respondent, the State of New Hampshire, New Hampshire Liquor Commission, (NHLC) is a State agency headed by Commissioner Joseph Mollica. The New

Hampshire Liquor Commission has retail store operations across the State, but its headquarters and principal place of operation is located at 50 Storrs Street Concord, NH 03301.

II. JURISDICTION AND VENUE

5. This Court has personal jurisdiction over the parties and subject matter jurisdiction to New Hampshire RSA 491:22 and RSA 498:1.

6. Venue is proper because the Respondent's headquarters is located in the City of Concord, which is located within Merrimack County. The cause of actions occurred in connection with directives provided by individuals working with or in Merrimack County and the City of Concord. See, RSA 507:9.

III. RELEVANT FACTS

7. On or about July 20, 2020, Petitioner Jacob Gorecki received an email from his direct supervisor, Regional Store Manager, Chris Keefe, which provided the following relevant instruction:

"The Commission is well aware that work performed by a full time employee on a Sunday or Holiday is "voluntary", but the Commission expects its lead Store Managers to schedule employees to work at their store seven days a week, throughout the year not including Easter, Thanksgiving, and Christmas since all the stores are closed.

This short notice to of you failing to properly schedule the store is unacceptable and I have given you options and suggestions on staffing the store and now I expect you to do your job and ensure there is coverage every day the store is scheduled to be open".

8. Mr. Gorecki responded to Ms. Keefe's email, stating that she has not provided adequate options in conformance with the Union's collective bargaining agreement, but instead, Ms. Keefe essentially told Mr. Gorecki to work Sundays himself and that others would follow his example. He expressed that he was looking for steps he should take or tools that might be available to him in order to find employees to staff the store. An example might be lists of employees from other nearby stores who are willing to

work weekends. Mr. Gorecki expressed that the instruction for him to work every Sunday was both and invalid directive, and an ineffective one as it was not helping to staff the stores on Sunday. He further expressed that the part-time employees available to him are not always available on Sundays, making it impossible to staff the store with part-time employees every Sunday.

9. In addition to the email exchange, Mr. Gorecki received a formal Corrective Action Plan, or CAP, on July 15, 2020 regarding an incident where a store was under staffed on a Sunday because other staff were unavailable to work during that time. In the CAP, the proposed solution by NHLC was, “Jacob is to build, maintain and manage a labor pool to support the customer demand and business as well as having two employees at all times during business hours including Sundays.” Aside from simply stating the directive, the NHLC did not provide any specific methods or tasks to perform in order to achieve the stated goal. Additionally, both the CBA and RSA 177:5 provide that NHLC cannot mandate full-time employees to work on Sundays and internal personnel practices do not provide managers with the ability to force part-time employees to work on days when they have marked themselves unavailable. This means that in order to staff a store on a Sunday when there are no full-time volunteers and no available part-timers, the manager must work the day him or herself.

10. Due to the COVID 19 pandemic, the New Hampshire Liquor Commission closed multiple stores and reduced the hours of other stores because of a critical staffing shortage. Staffing has been a severe problem since March of 2020, and remains a significant issue at the time of this filing.

11. Given the severe staffing shortage, the inability to mandate employees to work on Sundays, and the lack of tools or direction for a manager to staff stores, the NHLC has given a directive that is impossible to follow without violating the law and CBA or without forcing Mr. Gorecki to work every Sunday. Although Mr. Gorecki has attempted to comply with this

directive in good faith by emailing employees at his store to pick up Sunday shifts, having one-on-one conversations with said employees, contacting other stores to determine if there are staff available there, and sending out State wide requests for help with staffing, Mr. Gorecki still finds that he has inadequate staffing levels to keep the store open without having to work himself every Sunday.

12. Based upon the CAP, and the email from Chris Keefe, as well as other prior and subsequent conversations, Mr. Gorecki is of the understanding that if a store is understaffed or forced to close for any reason, he will be held accountable and will be subject to discipline, regardless of the steps he takes to ensure adequate staffing. At one point, Regional Manager Chris Keefe told Mr. Gorecki that if he did not work Sunday, then she would make sure that he worked every Saturday as a punitive measure.

13. Co-petitioner Shelly Duggan, likewise faces similar directives and understanding regarding the staffing of stores on Sunday.

14. Similar to Mr. Gorecki, Ms. Duggan has also been facing difficulty staffing her store, especially on Sundays. As a result, Ms. Duggan contacted her Regional Store Manager, Chris Keefe and asked for assistance in finding staff. Ms. Keefe suggested she send an email to staff requesting volunteers. Ms. Duggan sent the email to staff, but still could not find volunteers. Ms. Duggan then asked Ms. Keefe if she would also send an email request, hoping that the request would carry more weight coming from a regional manager. Ms. Keefe refused to send out such an email.

15. Without seeing any other options, Ms. Duggan told Ms. Keefe that the only remaining option would be to close the store on Sunday because there were no volunteers and

value SPD

employees cannot be forced to work. Ms. Keefe responded by saying "Do you like your job?" or "Do you want to keep your job?" or words to similar effect.

16. Only after Ms. Duggan emailed Jim Richards, Administrator of Store Operations, did Ms. Keefe then help to staff the store for that Sunday. Despite this one instance of relief, Ms. Duggan has worked every Sunday since October 4, 2020 until the time of this filing due to unavailability of staff willing to work Sundays, and the belief that if she were to close the store or open the store understaffed, she would be held accountable by way of discipline including potential termination.

II. COUNTS

COUNT I DECLARATORY JUDGMENT

17. The Petitioners hereby incorporate by reference paragraphs 1 through 16 as if fully set forth herein and further state as follows:

18. The facts above describe a plain violation of RSA 177:5, which states as follows:

"Sunday and Holiday Openings. – Notwithstanding any other provision of law, the commission may, in its discretion, open for business on any Sunday or legal holiday any state liquor store located on a main route where traffic is heavy; provided, however, that no state liquor store may be opened for business at any time on Easter or Thanksgiving day, whenever appointed, and Christmas day. Although full-time employees shall be given the option of working, no such employee shall be required to work on such days. The commission may employ part-time employees, subject to the rules of the director of personnel, to staff stores open on Sundays or holidays. Any full-time employee who works on such days shall be paid 1-1/2 times the employee's regular rate of pay for the actual

number of hours worked.” RSA 177:5.

19. As a result, the NHLC is not permitted to require full-time employees to work on Sundays, nor can it direct its managers to force other full-time employees to work on Sunday. Because internal personnel practices prevent managers from assigning part-time staff to shifts outside of their provided available days, managers, and specifically petitioners, frequently have insufficient staff to assign to Sunday shifts.
20. Thus when the NHLC directed and held Petitioners accountable for staffing stores on Sunday when there was a severe staffing shortage, it created a de facto requirement, if not de jure, for these employees to work Sundays themselves or face discipline.
21. The Petitioners have thus been forced to suffer direct harm in violation of RSA 177:5 due to loss of time off on Sunday.

COUNT II
REQUEST FOR TEMPORARY AND PERMANENT INJUNCTION

24. The Petitioner hereby incorporates by reference paragraphs 1 through 21 as if fully set forth herein and further states as follows:

25. In order to prevail on a preliminary injunction, the Petitioner must show that there is present threat of irreparable harm, there is no adequate alternative remedy at law, there is a likelihood of success on the merits by the balance of the probabilities and the public interest would not be adversely effected if the Court granted the preliminary injunction. Thompson v. N.H. Board of Medicine, 143 N.H. 107, 108 (1998) (citations omitted).

26. As discussed above, there is a threat of irreparable harm to the Petitioners because both Petitioners are being forced to work when they are legally prohibited from

being required to work. Both petitioners are being compensated for their time, but nothing can make up for the loss working on perpetual Sundays even when they choose not to do so due to invalid directive is violation of RSA 177:5.

27. The Petitioners have requested voluntary compliance with the law and the New Hampshire Liquor Commission has been unwilling to voluntarily comply with a voluntary cease and desist.

28. There is no adequate remedy at law as the Petitioner has an inadequate enforcement mechanism through the administrative grievance process which lacks the ability for preliminary injunction, and so Petitioners request equitable remedy from this Honorable Court, to require compliance with RSA 177:5.

29. There is a likelihood of success based on the balance of the probabilities as the State of New Hampshire, New Hampshire Liquor Commission has plainly given directives in violation of RSA 177:5 and was aware of its obligations and chose to disregard those obligations by choosing to illegally mandate the Petitioners work on Sundays under threat of formal discipline.

30. The public interest would not be adversely affected if the Court granted this preliminary injunction as public policy favors adherence to the law, and specifically determined it would not require liquor store employees to work on Sundays or Holidays.

31. After a full hearing on the merits, the petitioner requests that a permanent injunction issue.

WHEREFORE, the Petitioner respectfully request this Honorable Court grant the following declaratory and injunctive relief:

A. Grant the Petitioners' request for Declaratory Judgment;

B. Grant the Petitioners' request for a Preliminary Injunction from any further directive that mandates, on its face or in effect, that full-time NHLC employees work on Sundays or Holidays;

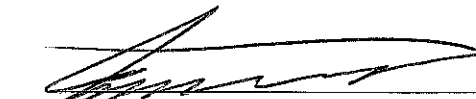
C. Schedule a hearing on this matter as soon as possible and issue Orders of Notice;

D. Order a cease and desist from any further requirement for Petitioners as full-time NHLC employees to work on Sundays or holidays and/or from placing any indirect requirements on Petitioners or other similarly situated employees, which may result in the de facto requirement of full-time employees being required to work on Sundays;

E. Grant such other and further relief as is deemed just and equitable.

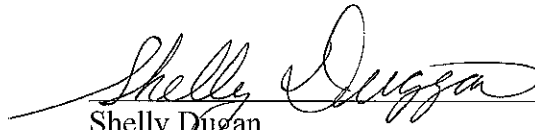
Respectfully submitted,

January 13, 2021
December ____, 2020



Jacob Gorecki

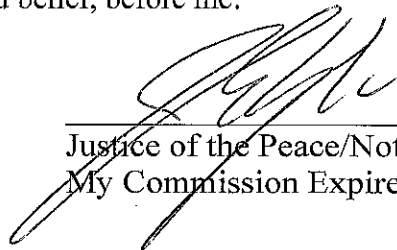
December 18, 2020



Shelly Dugan

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK *Cheshire*

Personally appeared, Jacob Gorecki, and swears that the foregoing facts attributable to him are true to the best of his knowledge and belief, before me:



Justice of the Peace/Notary Public
My Commission Expires:

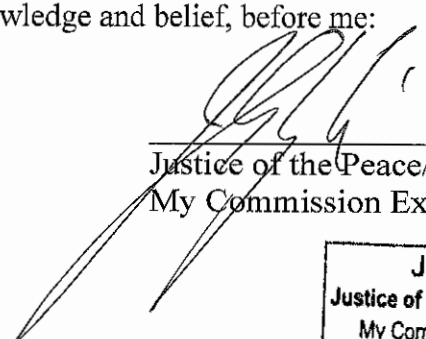
JOHN S. KRUPSKI
Justice of the Peace, State of New Hampshire
My Commission Expires March 27, 2024

STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

Hillsborough *JD*

Personally appeared, Shelley Duggan, and swears that the foregoing facts attributable to her are true to the best of her knowledge and belief, before me:



Justice of the Peace/Notary Public
My Commission Expires:

JOHN S. KRUPSKI
Justice of the Peace, State of New Hampshire
My Commission Expires March 27, 2024

Respectfully submitted,
Shelly Duggan
Jacob Gorecki
By and through their attorneys,
MILNER & KRUPSKI, PLLC

January 26, 2021

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