

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL  
(C.C.P. 1013A) OR CERTIFIED MAIL**

I, .....Cheryl Hammond....., do hereby certify that I am a resident of or employed in the County of .....Shasta....., over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

**LABOR COMMISSIONER, STATE OF CALIFORNIA**  
**2115 Civic Center Drive, Room 17**  
**Redding, CA 96001**  
**Tel: (530) 225-2655 Fax: (530) 225-2013**

I am readily familiar with the business practice of my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On .....October 4, 2007..... at my place of business, a copy of the following document(s):

.....**Order, Decision or Award**.....

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by first class mail....., with postage fully prepaid, addressed to:

NOTICE TO: **Richard Raymond Golden**  
**4916 Tralee Lane**  
**Redding CA 96001**

and that envelope was placed for collection and mailing on that date following ordinary business practices.

*I certify under penalty of perjury that the foregoing is true and correct.*

Executed on: .....October 4, 2007..... at .....Redding....., California

STATE CASE NUMBER: 15-19187 ST

*Cheryl Hammond*  
Cheryl Hammond

<b>LABOR COMMISSIONER, STATE OF CALIFORNIA</b> Department of Industrial Relations Division of Labor Standards Enforcement 2115 Civic Center Drive, Room 17 Redding, CA 96001 Tel: (530) 225-2655 Fax: (530) 225-2013		For Court Use Only:
Plaintiff: <b>Richard Raymond Golden</b>		Court Number
Defendant: PHI, INC., a foreign corporation		
State Case Number <b>15 - 19187 ST</b>	<b>ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER</b>	

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

**DATE: August 31, 2007**

**CONTINUED TO:**

**CITY: 2115 Civic Center Drive, Room 17, Redding, CA 96001**

2. IT IS ORDERED THAT: **Plaintiff recover from Defendant.**

\$	<u>0.00</u>	for wages (with lawful deductions)
\$	<u>0.00</u>	Reimbursable business expenses
\$	<u>0.00</u>	for interest pursuant to Labor Code Section 98.1
\$	<u>11,836.80</u>	for additional wages accrued pursuant to Labor Code Section 203 as a penalty and that same shall not be subject to payroll or other deductions.
\$	<u>0.00</u>	for recovery on dishonored payroll check
\$	<u>0.00</u>	other compensation(specify)
\$	<u>11,836.80</u>	<b>TOTAL AMOUNT OF AWARD</b>

3. The herein Order, Decision or Award is based upon the Findings of Fact, Legal Analysis and Conclusions attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award of the Labor Commissioner shall become final and enforceable as a judgment in a court of law unless either or both parties exercise their right to appeal to the appropriate court\* within ten (10) days of service of this document. Service of this document can be accomplished either by first class mail or by personal delivery and is effective upon mailing or at the time of personal delivery. If service on the parties is made by mail, the (10) day appeal period shall be extended by five (5) days. For parties served outside of California, the period of extension is longer(See Code of Civil Procedure Section 1013). In case of appeal, the necessary filing fee must be paid by the appellant and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner. If an appeal is filed by a corporation, a non-lawyer agent of the corporation may file the Notice of Appeal with the appropriate court, but the corporation must be represented in any subsequent trial by an attorney, licensed to practice in the State of California. Labor Code Section 98.2(b) provides that if the parties seeking review by filing an appeal to the court are unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other party to the appeal and assess such amount as a cost upon the party filing the appeal. **PLEASE TAKE NOTICE** that Labor Code Section 98.2 (b) requires that when an employer files an appeal of an Order, Decision or Award of the Labor Commissioner, the employer shall post a bond or undertaking with the court in the amount of the ODA and the employer shall provide written notice to the other parties and the Labor Commissioner of the undertaking. Labor Code Section 98.2 (b) also requires that the bond contain certain other conditions.

\* Shasta County Superior Court

1500 Court Street, Room 319  
Redding, CA 96001

**LABOR COMMISSIONER, STATE OF CALIFORNIA**

BY: C. Coldwell  
C. Coldwell HEARING OFFICER

**DATED: September 20, 2007**

BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

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RICHARD RAYMOND GOLDEN,	)	
	)	
	)	
Plaintiff	)	CASE NO. 15-19187-ST
	)	
v.	)	ORDER, DECISION OR AWARD
	)	OF THE LABOR COMMISSIONER
PHI, INC., a foreign corporation,	)	
	)	
	)	
Defendant	)	
	)	

BACKGROUND

Plaintiff filed an initial claim with the Labor Commissioner's Office on February 14, 2007.

The Amended Complaint<sup>1</sup> raises the following issues:

1. Waiting time penalties pursuant to Labor Code Section 203 at a daily rate of \$263.08.

Hearing was conducted in Redding, California, on August 31, 2007, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter. Plaintiff appeared. Assisting Plaintiff was Paul Bohelski, Representative for Office and Professional Employees International Union Local 108. Appearing for Defendant was Graham Picce, California Director. Attorneys for Defendant were John K. Skousen and E. Scott Smith.

Due consideration having been given to the testimony, documentary evidence and arguments presented, the Labor Commissioner hereby adopts the following Order, Decision or Award.

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<sup>1</sup> Plaintiff's Complaint originally included a claim for an unauthorized deduction from wages for period ending October 1, 2006 in the amount of \$658.50. The amount of \$658.50 was paid to Plaintiff prior to the herein hearing as explained in the Order, Decision or Award.

1 FINDINGS OF FACT

2 The basic facts are not in dispute. Plaintiff was employed by Defendant, an air ambulance  
3 business, to perform personal services as a helicopter pilot in Shasta County, California, under the  
4 terms of a collective bargaining agreement at the hourly rate of \$32.88. Plaintiff worked a 12-hour  
5 workday.

6 Plaintiff's employment for Defendant began on May 1, 2005 when Defendant purchased the  
7 air ambulance business from Catholic Healthcare West doing business as Mercy Medical Center  
8 Redding (MMCR). The asset purchase included a purchase of flight helmets. Plaintiff continued  
9 working for Defendant until he took part in a job action (general strike) on September 20, 2006.

10 Prior to his work for Defendant, Plaintiff worked for MMCR in the capacity of a helicopter  
11 pilot. At the time Defendant purchased MMCR's air ambulance business, Plaintiff had in his  
12 possession a flight helmet issued by MMCR. On January 10, 2006, Plaintiff signed a "Uniform and  
13 Equipment" form acknowledging that he had received from Defendant a uniform flight suit, cold  
14 weather jacket and identification badge. The agreement provided in part:

15 If, upon termination of employment, issued items are not returned, PHI Air Medical,  
16 California reserves the right to withhold pay or allowances for the cost of  
replacement.

17 Although Defendant requested Plaintiff to return company equipment when he joined the  
18 job action, Plaintiff did not return Defendant's equipment, including the helmet issued by MMCR.  
19 According to Plaintiff, he believed the job action would soon be over and that he would need the  
20 equipment when he returned to work.

21 On September 20, 2006, Defendant's Manager, Edward Gatza, sent a letter to Plaintiff  
22 stating in part, "Because you are engaging in a strike activity, you are being permanently replaced."  
23 On or about January 25, 2007, Plaintiff was formally discharged.

24 On September 22, 2006, Defendant paid Plaintiff wages for the period September 18, 2006  
25 through September 20, 2006. From the September 22, 2006 payment, Defendant made a deduction  
26 due to Plaintiff's failure to return Defendant's equipment of \$249.50 for an EPIRB, \$25.00 for a fuel  
27

1 key, \$15.00 for an ID badge, \$269.00 for a vest and \$100.00 for an operations manual for a total of  
2 \$658.50.

3 In a sworn affidavit, Richard A. Rovinelli, Defendant's Chief Administrative Officer and  
4 Director of Human Resources, stated that the equipment Plaintiff did not return included a flight  
5 helmet valued at \$850.00, an operations manual valued at \$100.00 and an identification badge  
6 valued at \$15.00. In his affidavit, Mr. Rovinelli states:

7 Rather than make this large a deduction from Plaintiffs and other AirMedical  
8 strikers, PHI decided to deduct a single standardized sum from the last pay checks of  
9 all strikers—AirMedical and Oil and Gas—based on the lower valued equipment  
10 used by Oil and Gas pilots (EPIRB, Fuel Key, I.D. Badge, Vest, and Operations  
11 Manual—total value \$658.50).

12 In mid-April 2007, Plaintiff returned to work for Defendant and was reimbursed the \$658.50  
13 previously deducted.

14 Although Plaintiff no longer claims reimbursement for the \$658.50 deduction, Plaintiff  
15 claims entitlement to waiting time penalties due to Defendant's deduction of \$658.50 from wages  
16 paid on September 22, 2006. Plaintiff argues that not only did he not authorize the withholding but  
17 that the withholding was made for items he never received, to wit: EPIRB, fuel key and vest.

18 Defendant argues that the Division of Labor Standards Enforcement does not have the  
19 authority to decide the herein matter because the claim is preempted by the Railway Labor Act.

20 Defendant also argues the collective bargaining agreement permitted the deduction of the  
21 cost of equipment from an employee's final wages if equipment was not returned.

22 The collective bargaining agreement states in Article 18, Equipment:

23 Pilots are responsible for all equipment assigned to them, and if they lose equipment  
24 or damage equipment through negligence, the pilot will be required to reimburse the  
25 Employer for the cost of the replacement.

26 Defendant also argues that the "Uniform and Equipment Agreement" which Plaintiff signed  
27 on January 10, 2006 allowed for the deduction from Plaintiff's wages. The agreement states in  
relevant part:

1 Issued Item(s) remain the property of PHI Air Medical, California, and must be  
2 returned upon termination of employment. If, upon termination of employment,  
3 issued items are not returned, PHI Air Medical, California reserves the right to  
4 withhold pay or allowances for the cost of replacement.

5 Defendant notes that although Section 1(E) of Industrial Welfare Commission Order No. 9  
6 expressly exempts Defendant from the pertinent provisions covering deductions from wages,  
7 Defendant's deductions were consistent with Sections 8 and 9 of the Order.

### 8 LEGAL ANALYSIS

9 Defendant argues that the Division of Labor Standards Enforcement (DLSE) does not have  
10 authority to decide the herein matter because the claim is preempted by federal law.

11 Section 301 of the Labor-Management Relations Act (LMRA) generally preempts state  
12 resolution or disputes arising under a collective bargaining agreement. Where there is a  
13 nonnegotiable state law right which is independent of a collective bargaining agreement (CBA)  
14 there is no trespass upon federal rights. The fact that a CBA is consulted during the course of a  
15 state determination does not extinguish an employee's claim. Further, the preemption standard  
16 under the LMRA is applicable to the Railway Labor Act.

17 In the instant matter, the CBA provides that "The pilot will be required to reimburse the  
18 Employer. . ." The CBA does not authorize a wage deduction nor does it state that a deduction will  
19 be made from the employee's wages as a method of reimbursement. The meaning of the CBA is  
20 not at issue; therefore, no interpretation is necessary and the DLSE has authority to issue an Order,  
21 Decision or Award of the Labor Commissioner in the herein matter.

22 The principal activity of Defendant is regulated by Industrial Welfare Commission Order  
23 No. 9, which regulates wages, hours and working conditions in the transportation industry.

24 Section 9(A) of Order No. 9 provides as follows:

25 (A) When uniforms are required by the employer to be worn by the employee as a  
26 condition of employment, such uniforms shall be provided and maintained by the  
27 employer. The term "uniform" includes wearing apparel and accessories of  
distinctive design or color.

1 Section 1(E) of Order No. 9 provides:

2 (E) Except as provided in Sections 4, 10, 11, 12, and 20 through 22, this order shall  
3 not be deemed to cover those employees who have entered into a collective  
4 bargaining agreement under and in accordance with the provisions of the Railway  
Labor Act, 45 U.S.C. Sections 151 et seq.

5 As noted by Defendant, Section 9 of Order No. 9 is inapplicable.

6 Labor Code Section 224 provides as follows:

7 The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an  
8 employer to withhold or divert any portion of an employee's wages when the  
9 employer is required or empowered so to do by state or federal law or when a  
10 deduction is expressly authorized in writing by the employee to cover insurance  
11 premiums, hospital or medical dues, or other deductions not amounting to a rebate or  
12 deduction from the standard wage arrived at by collective bargaining or pursuant to  
wage agreement or statute, or when a deduction to cover health and welfare or  
pension plan contributions is expressly authorized by a collective bargaining or wage  
agreement.

13 Nothing in this section or any other provision of law shall be construed as  
14 authorizing an employer to withhold or divert any portion of an employee's wages to  
15 pay any tax, fee or charge prohibited by Section 50026 of the Government Code,  
whether or not the employee authorizes such withholding or diversion.

16 The making of a deduction from wages without a specific written authorization from the  
17 employee constitutes a prejudgment garnishment of wages, and as such, is an abridgment of due  
18 process of law. Barnhill v. Saunders, 125 Cal.App. 3d 1, 177 Cal.Rptr. 803 (1981)

19 Defendant did not obtain a specific written authorization from Plaintiff; and further,  
20 Defendant made deductions for items which were never in Plaintiff's possession.

21 Labor Code Section 201(a) provides in relevant part:

22 If an employer discharges an employee, the wages earned and unpaid at the time of  
23 discharge are due and payable immediately.

24 On September 20, 2006, Plaintiff was effectively discharged when he was permanently  
25 replaced.

1 Labor Code Section 203 provides in relevant part:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance  
3 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
4 discharged or who quits, the wages of the employee shall continue as a penalty from  
5 the due date thereof at the same rate until paid or until an action therefor is  
6 commenced; but the wages shall not continue for more than 30 days. An employee  
7 who secretes or absents himself or herself to avoid payment to him or her, or who  
8 refuses to receive the payment when fully tendered to him or her, including any  
9 penalty then accrued under this section, is not entitled to any benefit under this  
10 section for the time during which he or she so avoids payment.


11 Although Plaintiff had a responsibility to return Defendant's uniform and equipment, when  
12 Plaintiff failed to return the property, Defendant's remedy was to file a complaint with appropriate  
13 law enforcement agencies, not to exercise self-help. Defendant's failure to pay Plaintiff's wages in  
14 accordance with Section 201 was willful within the meaning of Section 203 (Title 8, California  
15 Code of Regulations, Section 13250). Willful as used in Section 203 does not require malice or  
16 blamable conduct but merely that the failure to pay was intentional; therefore, Defendant owes  
17 Plaintiff additional wages of \$11,836.80 as a penalty (30 days times \$394.56 per day based upon a  
18 12-hour workday).

19 CONCLUSIONS

20 FOR ALL OF THE REASONS SET FORTH ABOVE, it is hereby ordered that:

- 21 1. Plaintiff takes \$11,836.80 as waiting time penalties pursuant to Labor Code Section 203.

22 Dated: September 20, 2007

23   
24 C. Coldwell, Hearing Officer

25 /////

**STATE OF CALIFORNIA**Arnold Schwarzenegger, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
2115 Civic Center Drive, Room 17  
Redding, CA 96001  
Tel: (530) 225-2655 Fax: (530) 225-2013



## **INFORMATION ABOUT HOW YOUR CASE WILL BE HANDLED AFTER THE HEARING**

Either party may file an appeal for a trial de novo (new trial) within 15 calendar days from the date your Order, Decision or Award is mailed from this office. The mailing date is shown on the enclosed Certification of Mailing.

You will be notified by mail if the Defendant (your former employer) files an appeal. You will also be sent the appropriate forms to request representation by our attorney.

If the Defendant does not appeal the Decision, the full amount shown on the Decision is due and payable to the Labor Commissioner's office within 15 calendar days from the date of service of mailing.

If your former employer neither pays nor appeals the Decision, a Judgment will be filed on your behalf with the appropriate court. It currently takes about 30 days for a Judgment to be filed. You will be notified when this occurs.