

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Rockingham County

DECISION OF THE HEARING OFFICER

Nature of Dispute: Jurisdiction

Employer: Rockingham County, 119 North Rd. Brentwood NH 03833

Date of Hearing: November 12, 2014

Case No.: 43333

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally filed a wage claim, asserting he was owed \$1,800 in unpaid longevity pay for 2011, 2012, 2013 and 2014. He further sought liquidated damages in the amount of \$14,002.80, because the employer failed to pay the longevity pay and his final wages within the prescribed timeframe.

The employer paid the claimant \$750 for the 2014 longevity pay which he removed from the claim, retaining the claim of liquidated damages for this issue.

The Department scheduled a pre-hearing conference for this case. The Department issued a Decision in this matter stating this Department did not have jurisdiction over these claims.

The claimant appealed this Decision to Superior Court. The Department filed a Motion to Stay the proceedings in Superior Court, pending a hearing on the issue of jurisdiction with this Department. The Superior Court granted the motion and this hearing follows on the issue of jurisdiction only.

The claimant argued the Collective Bargaining Agreement was not in place during the time the wages were earned, and in fact was not signed by all relevant parties until after his retirement on April 1, 2014. He agrees that the Teamsters Local Union 633 of New Hampshire (hereafter the "Teamsters") had been certified as the bargaining unit during his employment, without a contract in place.

The claimant had notified the Teamsters of these issues. They had declined to respond whether they would take a grievance on these claims. To date, no grievance has been filed.

The employer argued that the Teamsters had been designated and selected by a majority of the employee of Rockingham County Department of Corrections as their representative for purposes of collective negotiations and settlement of grievances, on August 31, 2011.

They argued that this Department does not have jurisdiction in this matter because the claimant was subject to the terms of a collective bargaining agreement, and that his exclusive remedy to resolve his claim was through the grievance procedure in the collective bargaining agreement.

FINDINGS OF FACT

The claimant worked for the employer from March 1991 through April 1, 2014, when he retired.

At all relevant times, the claimant was a Sergeant with the Rockingham County Department of Corrections.

In Cramer v Consolidated Freightways, Inc., 255 F .3d 683 (9th Cir.2001), the Court opined that a state law claim is preempted if it necessarily requires the court to interpret an existing provision of a collective bargaining agreement ("CBA") that "can reasonably be said to be relevant to the dispute."

In this case, the Collective Bargaining Agreement was not in effect during the most, if any, part of the period for which the claimant is seeking wages and liquidated damages. Even if an agreement had been in place, this dispute is for wages/longevity pay and liquidated damages, which do not require an interpretation of language.

Further, no grievance has been filed regarding these issues with or by the Teamsters, and they have declined to comment to the claimant as to whether or not they would grieve these issues.

The Hearing Officer finds that the Department does have subject matter jurisdiction over this Wage Claim. There is no clear direction that the utilization of the grievance procedure in the collective bargaining agreement, or the requirement to file a claim with the Public Employees' Labor Relations Board, is the exclusive remedy available to the claimant. RSA 275:51 V gives the claimant specific rights, which do not appear to be trumped by other statutes.

DECISION AND ORDER

Based on the testimony and evidence presented, it is found that this Department has jurisdiction in these matters.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 10, 2014

cc: Rockingham County
Elizabeth Bailey, Esq.

MJD/slh