

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MERRIMACK VALLEY SCHOOL DISTRICT SAU #46

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Merrimack Valley School District, 105 Community Dr., Penacook, NH 03303

Date of Hearing: February 12, 2014

Case No. 47134

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 6, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on January 10, 2014. The Wage Claim is for \$825.00.

The claimant testified that he was a school bus driver for the year 2012 to 2013. In November of 2012 the claimant was given a handbook and signed for the handbook. He also said that he never received a copy of the Collective Bargaining Agreement under which his position was covered. In November of 2012 the claimant declined the insurance coverage that the Union and the SAU #46 had agreed on. By declining the insurance coverage, the claimant received a buy-back amount from the school district.

The claimant stated that in the next year he heard another employee talking about the insurance buy back. He questioned the policy on the buy-back, after he missed the enrollment date, and was told that it was in the Collective Bargaining Agreement and he did not follow up on the buy back provision. He also stated that he never saw any of the postings on the buy back practice. He did say that there was a meeting to discuss the provisions of the Collective Bargaining Agreement but as a non-member of the Union, he was asked to leave the meeting at a certain point. He feels that there was not adequate notice of the policy and he should get the buy-back amount for not taking the coverage.

The employer testified that there was an agreed upon period to get out of the insurance coverage and receive the agreed upon but-back. There was a memo to all employees about this practice. The employer also set up meetings to go over the provisions of the Collective Bargaining Agreement. There was also an e-mail from the Union Vice-President concerning

opting out of the health plan. Every member of the Bargaining Unit has a password to access the site on the computer.

The employer believes that every employee has the responsibility to know the working policies and to question them as needed. The employer and the Union have resources set up to handle problems.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant worked under a Collective Bargaining Agreement and did not address any misinterpretation of the CBA, through the CBA. If he did request a grievance to be filed and it was not found to be a valid grievance, the claimant cannot address it in the Wage Claim forum.

Although the claimant was not a member of the Union, he was still covered by the Agreement and had the right to the grievance procedure. This would have been the proper avenue to take.

The employer was credible in their testimony that there were several ways to address this problem and they were not used. The claimant had a history of a past practice for the buy-out. He exercised his rights under the last Agreement. The employer and the Union did make contact with the employees and were available for meeting and/or questions. It does not appear the claimant went through this route seeking a resolve.

The Wage Claim is invalid.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to

prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 12, 2014

Original: Claimant
cc: Employer

TFH/all