

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

  
**V**

**FRATERNAL ORDER OF EAGLES, FOE #1934**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 I/II employee/employer relationship

**Employer:** Fraternal Order of Eagles 1934, 41 Exeter Street, Newmarket, NH 03857

**Date of Hearing:** March 6, 2014

**Case No.** 47165

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 12, 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 February 5, 2014.

The claimant testified that she was asked to work for the employer because she was known to the officers and she was out of work. She worked a set schedule and did not have any hiring agreement with the employer. She said that she was approached for the job as a non-member and not a volunteer. She has not received any federal wage forms for her work.

The claimant stated that she was terminated from her position just before Christmas. She questions how an employer can fire a person they claim to be a volunteer. The Wage Claim is for \$683.43.

The employer testified that all workers at the "club" are volunteers. The ones who wait on patrons are allowed to keep their tips and make the federal reporting themselves. People who become volunteers are told that at the start of their service. They are also told that there is no Worker's Compensation coverage. The people who work a steady position in the "club" are given stipends for their voluntary service. The claimant worked as a bartender and was not a member of the Fraternal Order of Eagles, FOE #1934.

**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.

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.

RSA 275:42 I reads: "The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor or any of the same, employing any person, except employers of domestic labor in the house RSA:42 I reads: "The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor or any of the same, employing any person, except employers of domestic labor in the house of the employer, or farm labor where less than 5 persons are employed." of the employer, or farm labor where less than 5 persons are employed."

RSA 275:42 II reads: "Employee" means and includes every person who is permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but exempts any person who meets the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work in achieving the result of the work.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this criterion does not prohibit the employer from reaching agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts of expenditures.

(h) The person receives compensation for work or services performed and remuneration is not determined unilaterally by hiring party.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(k) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(l) The person is not required to work exclusively for the employer.

This part of the law spells out when there is an employer/employee relationship.

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 valid. The claimant has the burden to show that she is due wages and is an employee and she met this burden.

The claimant testified credibly that she was an employee and not a volunteer. She was hired into a job and worked in that job. She testified that the only way to get into the club was to be a member, the guest of a member or an employee. The claimant was not a member or not signed in as a guest. The claimant was an employee.

Once the claimant is an employee the record keeping falls to the employer. In this case there are no records except that the claimant was on a consistent schedule. She worked according to the employer's policy until she was terminated.

The Wage Claim is valid in the amount of \$683.43.

### **DECISION AND ORDER**

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$683.43.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$683.43, less any applicable taxes, within 20 days of the date of this Order.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: April 2, 2014

Original: Claimant  
cc: Employer

TFH/cag