

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

**V**

**MERRIMACK VALLEY SCHOOL DISTRICT**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation time

**Employer:** Merrimack Valley School District, 105 Community Drive,  
Penacook, NH 03303

**Date of Hearing:** April 24, 2014

**Case No.** 47621

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on February 24, 2014. 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 March 25, 2014.

The claimant testified that he worked for the employer for nine years and three months. He was an hourly employee and was working under a Collective Bargaining Agreement. He was paid every two weeks and used the time clock method of recording time. The claimant said that he had a contract with the school district

The Wage Claim is for vacation time and work time. The claimant retired from his position in January of 2014. He stated that he was on a twenty-six pay schedule and the time provided by the school district is lacking the time contained in the Wage Claim.

The employer testified that the claimant, because of his position in the bargaining unit, received a letter of employment and not a contract similar to a teacher in the district. The letter stated how many days were to be worked and the district maintains the claimant was paid all that was due to him. The hiring agreement for the claimant was for 261 work days between July 1 and June 30.

The Wage Claim is for \$1,187.88 in unpaid wages.

### **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.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented at the hearing that the Wage Claim is not in the proper forum. Both parties testified that the policy and procedures contained in the Wage Claim were negotiated by the parties and put into a mutually agreeable Collective Bargaining Agreement.

The Department of Labor is not a party to the agreement and is not a party to any resolve to the interpretation of the agreement. In this case the claimant had an avenue to follow under the Collective Bargaining Agreement and for whatever reason choose not to do so. For the Department of Labor to rule on a contract interpretation and bypass the written and agreed upon intent of the contract is not allowed. The Department of Labor cannot impose its' findings as to what the interpretation of the agreement provisions mean.

The Wage Claim is not in the proper forum.

**DECISION AND ORDER**

Based on the written Collective Bargaining Agreement and the fact that the claimant's position was under the Agreement, the resolve to the wage challenge should be in the provisions of settling disputes in the established grievance procedure.

The Wage Claim is not in the proper forum for this claim.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: May 20 2014

Original:      Claimant  
cc:              Employer

TFH/clc