

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TOWN OF PITTSFIELD, NEW HAMPSHIRE

DECISION OF THE HEARING OFFICER

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

Employer: Town of Pittsfield, PO Box 98, Pittsfield, NH 03263

Date of Hearing: July 16, 2014

Case No. 48005

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 28, 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 June 19, 2014. The Town made a Motion To Dismiss and this was denied by the Department of Labor.

The claimant filed the Wage Claim for \$2,848.25 in q sick leave buy out. The claimant stated that he worked for the Town for five plus years in the position of Town Administrator. He was working under an Individual Employment Agreement. Part of the claimant's Employment Agreement said that he was entitled to "Other Benefits" that were negotiated for other town employees.

The claimant said that his Employment Agreement had a provision that said there was no payout of accrued sick leave upon termination. The Teamster's Local in the Town had a provision that allowed for the buy out of sick time as long as it was done by March 28, 2014. The claimant said that he terminated on March 29, 2014 and so he should have had this benefit under his contract in the section of "Other Benefits".

The Town mentioned that the section of the Employment Agreement dealt with provisions such as an additional holiday in one of the other negotiated contracts. It does not change the language of the Employment Agreement for the claimant. The section that says the time is lost upon termination is in place and not changed by one of the other negotiated agreements.

The Town believes there was an Employment Agreement in place for the claimant and that Agreement was followed when the claimant terminated.

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 sick 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 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 had an Employment Agreement that was very clear in the language that there was no payout of Sick Time upon separation from employment. The claimant was not credible in saying that the benefits agreed to in another negotiated contract would automatically extend to his agreement. It is not found that this is true.

The Town was credible in saying that the Sick Leave buyout was a negotiated provision to off set one Police Officers situation. It was not a provision that extended to the Town Administrator's agreement. If it were a new provision that could extend itself to another agreement, it would be done. However, this provision drastically changes the sick leave buy out in the Employment Agreement.

The Wage Claim is invalid.

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 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.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 5, 2014

Original: Claimant
cc: Employer

TFH/cag