

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Rockingham County

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid longevity pay

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

Date of Hearing: September 14, 2015

Case No.: 50787

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$300 in unpaid longevity pay for 2012 and 2013.

She argues that the employer failed to pay her longevity pay for 2012 and 2013. She had achieved five years of service for the payment for 2012, however, the employer did not make the payment of \$150 for 2012 or 2013. Per the employer's written policy, prior to achieving five years of service, no longevity is earned. She seeks the \$150 payments for 2012 and 2013.

The employer renewed their written objection to the Department hearing this issue as they argue the Department lacks jurisdiction.

The employer argues they were bound by the doctrine of status quo to only to pay the longevity pay at years of service in effect on August 31, 2011, the date that the Teamsters Union was selected by the employees of Rockingham County Department of Corrections as their representative for purposes of collective negotiations and settlement of grievances. They argue the claimant had not reached five years of service by December 2010, the last accounting of years of service for longevity payments, prior to August 31, 2011, to be eligible for longevity payments.

The employer further argues the Collective Bargaining Agreement (hereafter CBA), section 7.1 states, "There will be no retroactive pay associated with this Agreement. All wage adjustments are set forth herein shall occur and be implemented during the term of this Agreement and do not relate to time periods preceding the Parties' execution of this Agreement."

FINDINGS OF FACT

JURISDICTION

The employer renewed their argument that the Department is barred by jurisdiction from hearing this claim.

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. Even if an agreement had been in place, this dispute is for wages/longevity pay, which do not require an interpretation of language.

Further, no grievance has been filed regarding these issues with or by the Teamsters.

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.

LONGEVITY PAYMENTS

The claimant worked for the employer from November 2007 and is still employed today.

The claimant did not receive longevity payments for 2012 or 2013. She did receive a longevity payment for 2014.

She argues the employer should have paid her longevity payments for 2012 and 2013, at \$150 for each year.

The employer does not dispute that the claimant achieved five years of service for the 2012 or 2013 longevity payment.

The employer argues that they were bound by the doctrine of status quo to continue to pay the longevity pay at the rate in effect at the time 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 continued to use employee’s years of service accruals as of December 2010, as that was their last date of accounting prior to the bargaining agent’s agreement of August 31, 2011. As the claimant had not received five years of service as of December 2010, the last accounting of years of service prior to August 31, 2011, no longevity payments were made.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment

practices and policies regarding fringe benefits, including longevity pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits, including longevity pay, per RSA 275:49. Lab 803.03 (c) Pursuant to RSA 275:49, every employer shall inform his/her employees in writing of any change to such employees rate of pay, salary or employment practices or policies as referred to in Lab 803.03 (a) and (b) prior to the effective date of such change. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer's written policy regarding longevity pays states:

"6-11 LONGEVITY PAY.

Each full-time and part-time employee who has completed the required number of years of employment by December 31 shall be entitled to longevity payment in the first payroll in December of each year according to the following schedule:

- | | |
|----------------------|---------|
| A. Five years | \$150 |
| B. Ten years | \$300 |
| C. Fifteen years | \$450 |
| D. Twenty years | \$750 |
| E. Twenty-five years | \$1,000 |

The employer properly noticed the claimant of the policy regarding the fringe benefit of longevity pay.

The CBA policy Article IX retroactively effective as of July 1, 2013, regarding longevity payments states, "All aspects of Longevity Pay available to employees shall be governed by the County's Longevity Pay policies, -as may be modified from time to time at the sole discretion of the County."

The employer admitted that they did not notify any of their employees that the written policy regarding longevity payments would change as a result of the August 31, 2011, agreement. The employer assumed it was the Teamsters responsibility to notify the County's employees.

The employer's argument that the doctrine of status quo prevents them from making any changes to the benefits after a bargaining agent has been signed is not persuasive. The status quo doctrine does not preempt state statute. The employer failed to notify employees of any changes to the longevity payment policy as required by RSA 275:49 and Lab 803.03 (b), (c), and (f)(6).

The employer's argument that the Collective Bargaining Agreement section 7.1 states, "There will be no retroactive pay associated with this Agreement. All wage adjustments are set forth herein shall occur and be implemented during the term of this Agreement and do not relate to time periods preceding the Parties' execution of this Agreement." is also not persuasive. This is not an issue of receiving a retroactive benefit granted through the CBA. The claimant achieved the necessary years of service prior to the CBA effective date.

The employer notified the claimant through their written policy, of the employment practices and policies regarding longevity pay. The claimant met the qualification set forth in the policy to receive longevity pay. The employer did not notify

the claimant, as required by statutes and administrative rule, that there were any changes to the requirements for eligibility of longevity payments.

The employer's written policy prior to the Teamsters having 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, is the same policy to which the CBA refers.

No interpretation of the CBA is required, as the policy regarding longevity pay resides in the employer's written policy. The CBA simply points to the employer's written policy regarding longevity pay, and allows the employer to have the sole discretion to make changes to the policy.

The Hearing Officer makes no findings on application or legal effect of the status quo doctrine.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed longevity payments under the written policy of the employer, in the amount of \$300.00 (\$150.00 for 2012 and \$150.00 for 2013).

DISCUSSIONS

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met her burden in this claim.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:42 II and 275:43 V consider longevity pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant prove by a preponderance of the evidence that she is due the claimed longevity pay, it is hereby ruled that the Wage Claim is valid in the amount of \$300.00 (\$150.00 + \$150.00).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$300.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 5, 2015

MJD/kdc