

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



**V**

**DANBRO DISTRIBUTORS LLC**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Danbro Distributors LLC, 3700 South 26<sup>th</sup> Street, Philadelphia, PA 19145

**Date of Hearing:** March 23, 2016

**Case No.:** 52028

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 18, 2015. 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 the parties on February 25, 2016.

The claimant testified that on October 6, 2015, after nine and a half years of work, she was terminated from her position with the company. The company had lost their position with their supplier in New England. This was the location of the claimant's work and the area was no longer available to the company.

The claimant testified that one of the owners came to visit her with the news and to facilitate a transition. The claimant asked for a negotiated severance package because of her years of service and the volume of sales she had generated. The severance package was negotiated and the employer asked that the total be reached by weekly payments. The period of time was from October 9, 2015 until December 31, 2015.

The employer started the payments and then stopped. It appeared that the severance was stopped because the claimant found employment with a competitor. The competitor was the one that won the bid for the distribution in the New England area. The claimant testified that there was no language in any written documents about a "non-compete" agreement. The claimant also testified that she did not remember the process pointing out that going to work for a competitor would stop the severance. The claimant stated in the Wage Claim that there is \$16,923.16 in unpaid severance.

The employer testified that there is no severance plan in place for the company. They met with the claimant because of her seniority and sales production. The employer testified that the claimant wanted a lump sum payment and they agreed to the weekly payments until the end of the year 2015. The details of separation were placed into e-mails.

The employer testified that the severance was to cease if the claimant went to work for a competitor because, "they were not going to fund the enemy." The employer testified that this was the only condition upon the severance package.

### **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 275:43 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 severance pay into the category of wages when the severance is due and owing.

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

It was very clear to the Hearing Officer that the parties negotiated a severance package outside of any uniform written personnel policy. The employer testified credibly that they negotiated the severance plan based on the claimant's longevity and work production. The claimant was credible in her testimony that she asked for the severance plan and did negotiate it with the employer.

The New Hampshire Supreme Court in ACAS Acquisitions (Pecitech) Inc. v. Stephen C. Hobert 155 N.H. 381 addressed the practice of addressing severance on an individual basis and not as a matter of practice. The Supreme Court concluded that these severance benefits did not meet the definition of wages in RSA 275:42 III and RSA 275:43 III (now RSA 275:43 V).

The New Hampshire Supreme Court concluded that severance benefits offered to a few employees on individually negotiated terms did not meet the definition of wages. Because of this conclusion, the Hearing Officer finds that the severance pay offered to the claimant was not "wages" and therefore, is not within the scope of jurisdiction of a Wage Claim.

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

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: April 12, 2016

Original:      Claimant  
cc:              Employer

TFH/aph