

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

City of Somersworth

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid bonus/educational incentive
RSA 275:43 V unpaid vacation pay

Employer: City of Somersworth, 1 Government Way, Somersworth NH 03878

Date of Hearing: May 17, 2016

Case No.: 52115

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with two separate wage claim hearings for the employer. Separate decisions have been issued for each of these hearings.

The claimant asserts she is owed \$592.24 in unpaid educational incentive calculated at \$26.92 per week for twenty-two weeks. She also argues she is due \$2,855.16 in unpaid vacation pay, both due upon her separation of employment on November 20, 2015.

The employer denies the claimant is due any educational incentive pay or vacation pay.

FINDINGS OF FACT

The claimant worked for the employer from January 26, 2005 through November 20, 2015, when she resigned. The claimant worked under a collective bargaining agreement (CBA) between the City of Somersworth, NH and Somersworth Firefighters Local #2320, dated July 1, 2010 to June 30, 2012, which is still the agreement being used as of the date of this claim.

The claimant argues she is due a total of \$592.24 for an education incentive for the fiscal year July 1, 2015 through June 30, 2016, based on a total annual educational incentive of \$1,525, prorated for the twenty-two weeks she worked during the fiscal year.

The employer argues the claimant is not due any educational incentive under the CBA.

The CBA, previously submitted reads, in relevant part, the incentive payments shall be "paid on the first pay day in July and annually thereafter. Eligible employees with less than one (1) year of service on July 1, shall be paid one-twelfth (1/12) for each month of service." The policy also specifies the three areas of educational incentive payments "shall be paid \$xxx.xx per annum, in addition to their regular salary if.....[certain conditions are met]."

The educational incentive for the fiscal year July 1, 2015 through June 30, 2016, is due for payment for eligible employees on July 1, 2016. As such, the timeframe for the payment of any educational incentive for eligible employees for the fiscal year July 1, 2015 through June 30, 2016, has not yet occurred.

Therefore, the Hearing Officer finds the claimant fails to prove by a preponderance of the evidence she is due the claimed educational incentive under the written policy of the employer.

The claimant further alleges she is due \$2,855.16 in unpaid vacation pay which she accrued between January 1 and November 20, 2015, upon her separation of employment, and would have been granted to her on January 1, 2016.

The employer argues the claimant has been paid all vacation pay due, documentation previously submitted.

The claimant received a payout of vacation pay upon her separation of employment. She now disputes the amount of that payout.

The claimant relies on a December 4, 2005, memorandum from Robert Belmore, City Manager, in which he addresses concerns that there are several methodologies for determining vacation pay, whether by advance or arrears accrual and how payouts of vacation pay are made at separation of employment. The memorandum states, "I am unable to make any clear and consistent directive and each employee employment history of vacation accrual will need to be examined and a case by case decision made upon separation."

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 vacation 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 per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer's December 4, 2005, memorandum acknowledges there are differences in groups of employees regarding the vacation policy, and that case by case determinations need to be made based on an individual employee's circumstances.

The claimant worked under a CBA between the City of Somersworth, NH and Somersworth Firefighters Local #2320, dated July 1, 2010 to June 30, 2012, which is still

the agreement being used as of the date of this claim. The CBA postdates the December 4, 2005, memorandum, and the CBA is the governing written policy.

The CBA reads, in relevant part, "Article XXVI VACATION: 26.1 Every employee shall be eligible for a vacation with pay after one (1) year of service with the employer in accordance with the following schedule....."

The vacation policy grants employees paid vacation days either after completion of a year of service, or at the beginning of the year of service, depending on the employee's seniority.

There are no statements, inferences or other indications that an employee "accrues" time over the course of the year. The policy grants blocks of vacation days either at the end of year or at the beginning of the year, depending on the number of years of service obtained by the employee.

As the claimant did not complete the year of service, she is not eligible for the grant of vacation days. The policy does not provide for payment of any prorated portions of the grant of vacation days.

Therefore, the Hearing Officer finds the claimant fails to prove by a preponderance of the evidence she is due the claimed vacation pay under the written policy of the employer.

DISCUSSION

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 failed to meet her burden in this claim.

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 is owed the claimed bonus/education incentive, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 8, 2016

Original: Claimant
cc: Claimant's Attorney
Employer
Employer's Attorney

MJD/aph