

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Town of Newton Fire Department

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Town of Newton Fire Department, 2 Town Hall Rd, Newton, NH 03858

Date of Hearing: December 5, 2016

Case No.: 54110

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$353.76 in unpaid wages for hours in which he participated in a class required and approved by the Fire Department.

The employer denies the claimant is due any wages. They did not approve the claimant to take the class nor did they provide any expectation that they would pay for his time to attend the class.

FINDINGS OF FACT

The claimant worked for the town in the Fire and Police Departments for over twenty years, in several different capacities.

The Fire Department had changed procedures in 2014. The Selectboard appointed a new Fire Chief in December 2014. Prior to 2014, the members of the Fire Department chose their own command staff (including the claimant's position). After 2014, the Selectboard appointed a Fire Chief, who was responsible for choosing his own command staff (including the claimant's position).

As of December 2014, the Fire Department did not have any written standard operating procedures (SOP) or guidelines (SOG). The new Fire Chief implemented an initial SOP and SOG written policy in March 2015, and continues to add updates as needed. The standard procedure was to have employees sign an acknowledgement as new SOP or SOG addendums were added.

The Fire Chief set new required certifications for the command staff, similar to those required of the National Standard for Fire Safety, though no state or federal law requires these certifications in order to hold command staff positions. The SOP's

allowed a grace period of one year to obtain the certifications due to the availability of the classes.

The claimant held the position of Deputy Chief. His term for the position expired March 31, 2015.

The claimant argues that he was required to take three additional classes, Fire Officer I, ICS 300 200 100, and EMT Medical Safety, or risk demotion by the Department to a fire fighter, rather than the Deputy Chief position he held at that time. He argues the employer failed to pay for 16 hours of his attendance at a class to acquire the required certification.

He alleges he received the proper approval from the Fire Chief, documentation previously submitted, as required the SOP Administrative 10, dated March 1, 2015, which he vehemently denies receiving. He did have a copy in his possession at the hearing.

The employer argues the claimant did not have approval for class for the Fire Fighter I certification. The text message stated the claimant had the course already and "your good", which the Fire Chief explained meant that the claimant did not need to take the class. Further, the claimant completed the application for the Fire Fighter I certification and signed as both student and agency/department signee, in contravention of the SOP Administrative 10, which states the Fire Chief has the sole discretion to approve or deny the application for any course.

The claimant strenuously argues the SOP Administrative 10, effective March 15, 2015, was never given to him. He further argues this policy cannot be applied to him and the Department must pay him for the hours he spent at the classes.

SOP Administrative 10 does not speak to the payment of hours spent taking a class or certification. It speaks only to the payment of the class to the institution providing the class or certification.

Pursuant to Lab 803.04 Hours Worked. For the purpose of determining "all wages due" for hours worked in accordance with RSA 275:43, I, the department of labor, under the authority provided by RSA 275:54, incorporates the "Wage and Hour Publication 1312, Title 29 Part 785 of the Code of Federal Regulations, United States Department of Labor", reprinted May 2011 as specified in Appendix II.

CFR 785.29 Training directly related to employee's job.

The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. For example, a stenographer who is given a course in stenography is engaged in an activity to make her a better stenographer. Time spent in such a course given by the employer or under his auspices is hours worked. However, if the stenographer takes a course in bookkeeping, it may not be directly related to her job. Thus, the time she spends voluntarily in taking such a bookkeeping course, outside of regular working hours, need not be counted as working time. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in

his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.

The claimant did not have the required approval by the Fire Chief to take the courses. He was specifically notified, via text that he did not need to take the Fire Fighter I class. SOP Administrative 10 did not notify the claimant that he would be paid for the time spent attending classes or certifications.

The claimant's term of Deputy Fire Chief expired March 31, 2015. In order to be eligible for a new term in the position, three courses/certifications were required.

Further, CFR 785.29 states that "preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work."

The Hearing Officer finds the time spent taking the classes or certifications were not time worked, and that the claimant did not have the Fire Chief approval for the Fire Fighter 1 certification.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

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 he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 3, 2017

Original: Claimant
cc: Employer

MJD/das