

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



**V**

**FOE Claremont Eagle Local Aeries 4547**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** FOE Claremont Eagle Local Aeries 4547, 47 Thrasher Rd, Claremont NH 03743

**Date of Hearing:** January 17, 2017

**Case No.:** 54118

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$12,143.39 in unpaid wages for hours worked between August 2014 and December 2015. She agrees she was a member and officer of the FOE Claremont Eagle Local Aeries 4547; however, she was an employee as well. She performed many functions, including shopping for supplies and liquor, hanging security cameras, cleaning the kitchen and generally “bar manager”.

FOE Claremont Eagle Local Aeries 4547 disagrees with this claim because he felt members and officers should not be paid. He also believes the amount she is seeking is too high. Further, the charter for the FOE Claremont Eagle Local Aeries 4547 was revoked and has now dissolved. All assets have been returned to the Grand Aerie Fraternal Order of Eagles.

**FINDINGS OF FACT**

The claimant worked for the employer between August 2014 and December 2015, performing many functions. The claimant was a member and officer of the FOE Claremont Eagle Local Aeries 4547.

FOE Claremont Eagle Local Aeries 4547 argued that members are volunteers. No documentation was presented to show that the Local 4547 is indeed a 501(c) organization.

This Department must first determine whether the workers were employees of an employer.

The US Supreme Court opined in Goldberg v Whitaker House Cooperative Inc, 366 US 28 (1961), that “members of the cooperative who performed homework, and were paid on a piece-rate basis fixed by the cooperative for manufacturing items the

cooperative desired, and who were subject to expulsion for substandard work or for failure to obey regulations, were 'employees' of the cooperative within the Fair Labor Standards Act."

The New Hampshire Supreme Court opined in Caswell v. BCI Geonetics, Inc. 121 N.H. 1048, that RSA ch. 275 is entitled "Protective Legislation," and we should construe it with that purpose in mind.

Pursuant to Lab 803.05 Exemption. The term "employee" as it applies to RSA 275:42, I and RSA 279:1, X shall not apply to the following:

(a) Bonafide volunteers:

(1) When such volunteers are performing work for public, charitable, or religious facilities;

(2) When such activities are exempt under 29 CFR Ch. V Section 553:100-106, WH Publication 1297 "Employment Relationship" of the Fair Labor Standards Act;

(3) Where such bonafide volunteers do not displace a paid employee; and

(4) Where such volunteer duties do not necessarily or traditionally lead to paid employment.

FOE Claremont Eagle Local Aeries 4547 does not meet the criteria set forth to have volunteers in their establishment, based upon the documentation provided for the hearing.

RSA 275:42 II establishes criteria for an employee. No documentation was presented to show the workers cited do not meet the criteria.

Therefore, construing RSA 275 with the purpose of "protective legislation" in mind, the workers are found to be employees of an employer, the FOE Claremont Eagle Local Aeries 4547, (hereafter "the employer").

The claimant provided credible testimony and evidence she worked the hours claimed and did not receive the claimed wages.

The employer's argument that members and officers should not be paid is not found persuasive, nor is the argument that she did not work the hours claimed. The employer did not present any credible testimony or evidence to refute that of the claimant.

The Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed wages in the amount of \$12,143.39.

### **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 that the claimant proved by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$12,143.39.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$12,143.39, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: February 2, 2017

Original: Claimant  
cc: Employer

MJD/das