



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 29, 2020

IN THE MATTER OF:

Appeal Board No. 613000

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding, effective June 29, 2020, that the wages paid to the claimant, a non-professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590

(11). The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed November 12, 2020 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed with respect to the issue of reasonable assurance, and specifically whether the claimant was given reasonable assurance that the proposed economic terms and conditions of the 2020-2021 school year would be the same or not substantially less favorable to the claimant as the prior academic year. The parties shall have a further opportunity to produced testimony and evidence on this issue.

At the further hearing, the parties shall be questioned regarding whether there were discussions between the employer and the claimant about the number

of days per week and hours per day she would be working in the 2020-2021 school year. If there were such conversations or communications, the employer is directed to produce the individual who had these discussions with the claimant. The parties shall be prepared to testify about the substance of those communications, and when they occurred.

In addition, the parties are directed to produce the school district's contract with the Union to which the claimant belonged, which may include information regarding the number of days and hours the claimant and/or individuals in her position were being offered, or could be certain to work, in the 2020-2021 school year, or other terms that might affect the decision in this case. An individual knowledgeable about the terms and conditions of this contract shall be produced, and the relevant portions of the contract shall be received into evidence after the appropriate confrontation and opportunity for objection.

The hearing Judge shall receive into the record further testimony and evidence necessary to decide the issue.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a further hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER