

STATE OF WISCONSIN, DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

vs.

MEMORANDUM DECISION
Case No. 81CV2312

LABOR AND INDUSTRY REVIEW COMMISSION
AND JOHN W. DAVIS, GLEN C. DYKE,
EDWARD FRIEDE, DUANE H. GOLLIHER,
DENNIS L. GUNDERSON, NORMAN HOVEY,
MATTHEW MORRELL, RICHARD C. OLSON,
JOHN F. RENDALL, ELTON HUBBARD,
STEVEN W. MARTY, DANIEL F. BAUMANN,
DENNIS R. BRUCH, GORDON F. MAEL,
JAMES L. ZWICK AND KENNETH L. PAGE,

Defendants.

The question in this case is whether employes of the Department of transportation are entitled to unemployment compensation during mandatory "comp-time" even when they continue to receive wages earned in previous, over-time hours. The Labor and Industry Review Commission (LIRC) ruled that they are so entitled.

While there are compelling reasons for a contrary finding, the deference to agency determinations mandated by state law requires that I affirm the commission's decision.

The supreme court has discussed the purpose of the Unemployment Compensation Act on several occasions:

"The fundamental objectives of unemployment compensation are to mitigate economic loss to a worker and his family who is committed to the labor market, but is unable to find work because the economy has not provided enough jobs; to sustain general purchasing power by providing a built-in brake on a recession thus serving the interests of the economy at large." Milwaukee Transformer Co. v. Industrial Commission, 22 Wis. 2d 502, 571 (1964)."

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"The policy of the Wisconsin unemployment compensation act is to aid the unemployed worker who is tied to the labor market and unable to find work and to limit his economic loss and his loss of purchasing power in society." Star Line Trucking Corp. v. DILHR, 109 Wis. 2d 266, 283 (1982), Abrahamson, J., concurring in part and dissenting in part, n. 1.

The act is to be construed liberally to protect unemployed persons, and employees are presumed to be eligible for benefits unless a specific provision in ch. 108, Stats., disqualifies them. Star Line Trucking Corp. v. DILHR, supra; Consolidated Construction, Inc. v. DILHR, 71 Wis. 2d 811 (1976). There is no such statutory disqualification applicable to the mandatory "comp-time" situation; and the commission could reasonably have concluded (as it did) that pay for forced compensatory-time leave does not constitute vacation or holiday pay, or voluntary leave, within the meaning of the exclusions found in secs. 108.04 and .05, Stats.

The LIRC has discretion in formulating and applying rules of law:

"If several rules or several applications of a rule are equally consistent with the purpose of the statute, the court will accept the agency's formulation of the standard." Star Line Trucking Corp. v. DILHR, supra, at 283.

It is reasonable to conclude that, in the context of the unemployment compensation laws, deferred wages may be considered to have accrued during the period in which they were earned--not the period in which they were paid. Sec. 108.03(1), Stats., declares that "Benefits shall be paid to each unemployed. . . employe. . ." Sec. 108.02(17), Stats., provides that "an employe shall be deemed 'totally

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unemployed' in any week for which he receives no wages." Sec. 108.02(6) indicates that "wages" means "every form of remuneration payable for a given period. . .to an individual for personal services. . .". These provisions may be read as suggesting that whether an employe is receiving wages for a given period is to be ascertained by identifying the period during which the employe worked, rather than the period in which he or she was paid. Phrases such as "in any week for which he receives no wages," and "remuneration payable for a given period" may be construed in this fashion. Read this way, these sections indicate that employes receiving deferred wages, but not currently earned wages, may be entitled to unemployment compensation benefits.

Additionally, under sec. 108.05(6), an employe must repay unemployment compensation benefits received if back pay is awarded for the period in which benefits were paid. This also suggests that pay accrues during the period it is earned, rather than the time it is actually received.

Finally, in a case almost exactly on point, the New York court held that an employee on paid "comp-time" was entitled to unemployment compensation benefits, stating: ". . .(C)laimant was not receiving salary or wages but rather his own previously earned money and need is not the criterion for eligibility under unemployment compensation programs." Grandomenico v. Meadow Gold, [1981] Unempl. Ins. Rep. (CCH) sec. 10,852 at 495.

I conclude, under all the circumstances that the commission's interpretation, while arguably stretching both the letter and the spirit of the Unemployment Compensation Act, cannot be said to be

unreasonable or inconsistent with the aims of the law.

The decision will be affirmed, and counsel for the commission may draft the appropriate order.

Dated at Madison, Wisconsin this 20th day of June, 1983.

BY THE COURT:



WILLIAM EICH
CIRCUIT JUDGE

cc: Barbara F. Bird
Richard Graylow
William Haus
Robertamarie Kiley

DEC 04 1984

A party may file with the Supreme Court
a petition for a writ of certiorari by
the Court of Appeals pursuant to s. 805.10
within 30 days hereof, pursuant to Rule
809.02 (1).

No. 83-1475

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

NOTICE

This opinion is subject to further
editing. If published the official
version will appear in the bound
volume of The Official Reports.

STATE OF WISCONSIN, DEPARTMENT
OF TRANSPORTATION,

Plaintiff-Appellant,

v.

LABOR AND INDUSTRY REVIEW
COMMISSION, JOHN W. DAVIS,
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ZWICK, and KENNETH L. PAGE,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Dane
county: WILLIAM F. EICH, Judge. Reversed.

Before Foley, P.J.,¹ Dean and Cane, JJ.

FOLEY, P.J. The judgment in this case entitles
several employees of the Wisconsin Department of Transportation
to unemployment compensation benefits while they were taking
compensatory time off, even though they continued to receive
their regular salaries and benefits from the state. The circuit
court concluded that it had to defer to the Labor & Industry

A reasonable construction of sec. 108.02(6) would include the salaries and benefits the defendants received while they were taking compensatory time off. The legislature has not limited its definition of "wages" to the listed forms of payment. It has included vacation pay as a wage, even though the right to a vacation is earned by previous work. Because compensatory time off is similar to a paid vacation, it is appropriate to construe "wages" to include salaries and benefits the defendants received while they were taking compensatory time off. See State v. Engler, 80 Wis.2d 402, 408, 259 N.W.2d 97, 100 (1977).

Conversely, the commission's construction of "wages" is not reasonable because it transgresses the purpose of ch. 108. We therefore cannot defer to the commission's construction. See Milwaukee County v. DILHR, 80 Wis.2d 445, 456, 259 N.W.2d 118, 123 (1977). The purpose of unemployment compensation is to sustain the purchasing power of unemployed workers. It mitigates the economic loss suffered by workers and their families as a result of unemployment. See sec. 108.01(1), Stats; see also Milwaukee Transformer Co. v. Industrial Commission, 22 Wis.2d 502, 511, 126 N.W.2d 6, 12 (1964). It aids workers who are "unable to find work because the economy has not provided enough jobs" Id.

(1976). There was therefore no money accrued for disbursement at a later date as in Grandomenico v. Meadow Gold, Unempl. Ins. Rep. (CCH) ¶ 10,852 (N.Y. Nov. 30, 1981). We need not, in any event, look to the decisions of other jurisdictions in construing our own Unemployment Compensation Act. See Moorman Mfg. Co. v. Industrial Commission, 241 Wis. 200, 207, 5 N.W.2d 743, 746 (1942).

By the Court.--Judgment reversed.

Recommended for publication in the official reports.

A P P E N D I X

- 1 This opinion was circulated and approved before Judge Foley's death.