STATE OF WISCONSIN : CIRCUIT COURT : OUTAGAMIE COUNTY

APPLETON MEMORIAL HOSPITAL,

Petitioner,

-vs-

CASE NO. 17032

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent. Decision No. 11661

MEMORANDUM DECISION

Pursuant to Sec. 111.07 (8) and Chapter 227, Wis. Stats., Appleton Memorial Hospital has petitioned this Court for a review of the findings of fact, conclusions of law and order made and entered by the respondent, Wisconsin Employment Relations Commission, on March 7, 1973. Such order requires the Petitioner to pay an employe certain vacation pay. The commission has counter-petitioned this Court, pursuant to Sec. 111.07(8) of the Wisconsin Statutes for enforcement of its order.

Counsel for both parties have filed briefs with the Court, and a stipulation as to the Court's jurisdiction was entered into between the parties.

The facts of this case are undisputed and subject to stipulation between the parties.

An employee of the Appleton Memorial Hospital reached his 5th Anniversary on December 26, 1971.

The employment contract between the Petitioner and Local 150, Service Employees International Union, AFL-CIO, recognized bargaining unit for the employee, provided that all persons of this employee's class with six years of service shall receive three weeks vacation.

On May 1, 1972, a new labor agreement was entered into between the employer and union providing that all employees of this class with five year's service shall receive three weeks vacation. The employee had completed five years of service on December 26, 1971, and following execution of this new labor contract, requested a third week of vacation. His request was denied by the employer, and the matter was heard by the employment relations commission, which found that the employer's refusal to grant a third week of vacation was a violation of the terms of the new collective bargaining agreement and that the employer had, therefore, committed an unfair labor practice within the meaning of Wis. Stats., Sec. 111.06(1)(f).

The issue as perceived by the employer is whether vacation benefits to which an employee is entitled is determined by the labor agreement in effect at the time the vacation is earned or at the time the vacation is taken.

The respondent frames and argues a different issue, to-wit: does the labor agreement in the instant case provide for three weeks vacation to all employees who reach their 5th anniversary date prior to the execution of the labor agreement on 1 May, 1972.

The different approach and argument taken by the Petitioner and Respondent lead to different conclusions.

The Respondent has argued that the Wisconsin Employment Relations Commission made a factual determination as to the intent of the parties and concluded that that determination is controlling upon this Court. The argument is: since the commission found that the parties intended all employees who had reached their 5th anniversary date on 1 May, 1972, were entitled to the increased vacation benefits as provided in that contract, such finding is binding upon this court unless contrary to the great weight of the credible evidence.

There is no question that if the parties had intended to provide for three weeks vacation for all employees who had reached their 5th anniversary date by 1 May, 1972, such an agreement would be valid and given full force and effect. It may even be true that that was the intent of the parties in the agreement before this Court in the instant case. The difficulty, however, is that is not the basis upon which the commission decision is made.

The commission in its memorandum accompanying its findings of fact, conclusions of law and order, construes Article XIV of the Contract and specifically finds that the contract language does not provide that vacation eligibility is determined by anniversary date. The commission made no findings of fact as to the intent of the parties, nor in its discussion did it concern itself with the intent of the parties. Instead, the commission's determination was made on an interpretation of the language in the contract. This Court is unable to accept the interpretation of the commission.

Article XIV, Sec. 6, provides that "Vacations must be earned at the time of payment and taking."

Sec. 7 provides that "Vacation period shall be from employee's anniversary date to anniversary date."

Sec. 8 provides that "Vacations earned must be taken during the following vacation period."

These provisions, read together, lead to the inescapable conclusion that vacation is earned from anniversary date to anniversary date and eligibility is established as of the anniversary date of each employee. Accordingly, this Court must conclude that an employee's eligibility for vacation is determined as of the anniversary date of the employee and not at the time the vacation is taken. This interpretation is consistent with the overwhelming weight of authority. Maui Pineapple Co., 47 Lab. Arb. 1051, 1053; National Brewing Co., 41 Lab. Arb. 483, 485-488; King-Seeley Thermos Co., 64-3 ARB, 8873 at 6014; Muskogee Iron Works, 29 Lab. Arb. 504, 507; B. F. Goodrich Chemical Co., 28 Lab. Arb. 274, 278; Wilson & Co., 10 Lab. Arb. 106, 107.

This Court is, therefore, forced to conclude that the respondent has made an error of law in its interpretation of the contract language and its findings of fact, conclusions of law and order must be set aside.

The Petitioner may prepare a judgment so providing for the signature of this Court.

Dated at Appleton, Wisconsin, this 7th day of February, 1974.

BY THE COURT:

Gordon Myse /s/
Circuit Judge