

STATE OF WISCONSIN
CIRCUIT COURT
POLK COUNTY
BRANCH 1

St. Croix Falls School District,
Petitioner,

vs.

Wisconsin Employment Relations Commission
Respondent.

File No. 93 CV 301
Decision No. 27215-D

Petitioner seeks Circuit Court review of an administrative decision by respondent.

FACTS

Northwest United Educators (Union) represented certain employees of the St. Croix Falls School District (District) as exclusive bargaining agent. There was an agreement in effect from July 1, 1989, to June 30, 1991. During the contract hiatus, from June 30, 1991, until the next agreement, the District unilaterally invoked what the District calls a "reasonable work rule." On January 2, 1992, the District established a work rule that changed the previous practice of employees using sick leave in one-hour increments to the requirement that sick leave be used or counted by half-day minimums.

The prior agreement was silent as to the issue but the past practice had been to use sick leave in as little as one-hour increments.

After administrative hearing, the hearing examiner concluded that the District, by unilaterally changing the sick leave policy during the contract hiatus, committed a prohibited practice in violation of Section 111.70(3)(a)4, Wis. Stats.

Respondent Wisconsin Employment Relations Commission affirmed the Hearing Examiner's decision.

ISSUE

The ultimate issue for the court is whether the District was obligated to bargain collectively over the issue of sick leave time increments. If so, the decision of the respondent should be upheld.

DISCUSSION

The basic position of the District is that the sick leave issue does not relate to mandatory subjects of

collective bargaining such as wages, hours, or conditions of employment. Upon this premise, the District makes several arguments. First, that the commonly referred to "zipper clause" effectively precludes the Union from invoking the principle of "past practices."

The District cites the WERC precedent of Marathon County Dec. No. 41722 (11/89) for the proposition that the "zipper clause" should control in this action as well. There, the County apparently took away the cost-free parking that had been provided as a long-standing past practice.

This court views that precedent as clearly distinguishable in that there was no bottom line effect on any employee's paycheck in Marathon County. Here, there is a clear danger that an employee's paycheck may be reduced in the event the employee depletes the sick leave account earlier because of the changed sick leave accounting practice unilaterally imposed by the District.

Next, the District argues that the half-day minimum increment for sick leave usage was a reasonable work rule. Since the District and the Union had agreed that the District had the right to invoke reasonable work rules, the argument goes, the District should prevail in its right to unilaterally impose this rule. Unless the work rule is unreasonable, the District is within its management rights.

Finally, the District argues that during the contract hiatus both the District and the Union must maintain the status quo. The District argues that the status quo is a dynamic concept and consequently the District is still entitled to exercise its management rights during a contract hiatus by imposing reasonable work rules.

The analysis propounded by the District relies totally upon the underlying premise that the change in the accounting of sick leave usage is not a mandatory subject of collective bargaining.

The Court is satisfied that if a work rule has the effect of potentially reducing the paycheck of the employee, then the work rule must be bargained and may not be unilaterally imposed.

This work rule clearly has the potential to reduce an employee's pay simply because of the altered accounting practice. That, in this court's opinion, brings the subject within the ambit of wages, hours, and conditions of employment and makes the topic a mandatory subject of collective bargaining.

DECISION

Upon the basis of the foregoing, the court hereby affirms the Wisconsin Employment Relations Commission decision and order in all respects.

Counsel for respondent may draft an appropriate order consistent with the foregoing.

Dated at Balsam Lake, Wisconsin, this 15th day of February, 1994.

BY THE COURT:
/s/ James R. Erickson

James R. Erickson (signed)
Circuit Judge, Branch 1