

STATE OF WISCONSIN  
CIRCUIT COURT  
DANE COUNTY  
BRANCH 15

THE WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO,  
Petitioner,

vs.

THE STATE OF WISCONSIN and its WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION (WERC),  
Respondent.

Case No. 94-CV-2711

Decision No. 27566-C

#### DECISION AND ORDER

Petitioner Wisconsin State Employees Union (WSEU), AFSCME, AFL-CIO (the Union) filed a petition for review of the decision of the State of Wisconsin Employment Relations Commission (WERC) on August 25, 1994. The Union contends that the decision of WERC is erroneous as a matter of law and not based upon credible evidence. Both parties have filed briefs in support of their positions.

#### FACTS

Mr. Vernardt Rost is an employee with the State of Wisconsin. At the time of the events subject to the current appeal, Rost was an employee at the University of Wisconsin - Fond du Lac Campus. Rost was wrongly discharged from his employment and subsequently filed a grievance against the State. On September 17, 1991, the State and the Union entered into a settlement regarding this discharge.

The relevant portion of that settlement and the portion in dispute states:

Item one, the employer will pay the grievant an amount to be determined as gross wages, which will yield a net amount of \$5000.

Transcript of Record, Joint Exhibit 1, p.3.

In calculating the gross wage from which the \$5000 net amount would be determined, the State made the following assumptions, as explained in a May 13, 1992 memorandum sent to the Department of Employment Relations from the State:

1. The "amount" would be the only compensation paid to Mr. Rost in 1991 by the State.

2. The \$5000 plus an amount for F.I.C.A. and State and Federal income tax withholding required by law to be deducted from the employe [sic], would be paid by the State.

3. This total amount was, by law, to be reported as income to the employe [sic] for social security and income tax purposes.

4. We would use the designation of 'Single, No Dependents' for determining tax withholdings. We would not concern ourselves [sic) whether Mr. Rost had additional deductions which would decrease required withholding.

Transcript of Record, Joint Exhibit 2, p.1.

On October 31, 1991, the State paid Rost the net amount of \$5000. This \$5000 was the net amount after the State calculated tax and social security payments totalling \$500 for a gross payment of \$5500. 1/ Rost alleges that these gross income payments were inadequate, and as a result, Rost owed further taxes on the \$5000 net income payment of \$1126.75. 2/

The reason for the tax payment discrepancy is that the State calculated its gross income figure (the amount from which taxes would be deducted to total a net payment of \$5000) on Rost's having earned only \$5000 for the tax year. Because of the State's position in this regard, the State did not need to pay federal income taxes on behalf of Rost because Rost's income of \$5000 fell below the threshold amount required to include federal tax liability. Because Rost actually earned more than \$5000, Rost incurred federal tax liability and additional state tax liability. 3/

Rost paid these additional tax obligations and sought reimbursement from the State pursuant to the settlement agreement. The Union filed an unfair labor practices complaint with WERC on behalf of Rost, alleging that the State breached its settlement agreement by inadequately paying taxes relevant to the \$5000 settlement. On March 15, 1994, the hearings examiner concluded that the settlement agreement was unambiguous and that the State fully complied with its terms by paying Rost the sum of \$5000.

The Union appealed this decision to the full commission. WERC concluded that, although the settlement agreement was ambiguous, the State complied with the terms of the settlement agreement as intended by both parties. WERC affirmed the decision of the hearings examiner. It is from this decision that the Union files its Petition for Review with the court.

## DISCUSSION

The Union requests that the decision of WERC be reversed and the court find that the State committed an unfair labor practices activity as a result of its alleged breach of the settlement agreement for failing to pay its full tax obligations under the agreement.

### 1. Standard of Review

Chapter 227, Wis. Stats., outlines the procedures applicable to a review of an administrative

decision. The standard of review the court will apply depends upon whether the issues involve questions of law or questions of fact. Agency findings of fact will be upheld on appeal if the agency's findings are supported by substantial evidence. Sec. 227.57 (6), Wis. Stats.; Omernick v. Dept. of Natural Resources, 100 Wis. 2d 234, 250 (1981), cert. denied 454 U.S. 883 (1982).

Application of an agency's findings of fact to a statute is a question of law warranting independent review by the court. In the Matter of the Arbitration among Madison Landfills, Inc. v. Libby Landfill Negotiating Comm., 179 Wis. 2d 815, 825 (Ct. App. 1993), aff'd 188 Wis. 2d 613 (1994).

An agency may be entitled to some deference regarding its conclusions of law if the agency is charged with enforcing a particular statute and as a result, has expertise in that area. William Wrigley Jr. Co. v. Dept. of Revenue, 176 Wis. 2d 795, 801 (1993); School Dist. of Drummond v. Wisconsin Employment Relations Comm., 121 Wis. 2d 126, 131-32 (1984). Sec. 227.57(10). However, the court will set aside an agency action if the court finds that the agency has erroneously interpreted a provision of law. Sec. 227.57(5), Wis. Stats.

When facts are not in dispute and the agency is not interpreting a statute with which it has expertise, the court need not give deference to the agency's decision. Department of Revenue v. Horne Directory, Inc., 105 Wis. 2d 52, 56 (1981). In this case, the facts are not in dispute and the interpretation of a statute is not at issue. Instead, the dispute in this case involves the meaning of that portion of the settlement agreement dealing with the \$5000 net payment to Rost. WERC is correct that the interpretation of a collective bargaining agreement is a question of law and, because WERC has special expertise in interpreting collective bargaining agreements, the court should uphold a WERC interpretation of such an agreement if reasonable. County of La Crosse v. Wisconsin Employment Relations Commission, 182 Wis. 2d 15, 41 (1994). However, this case does not involve the interpretation of a collective bargaining agreement. Because settlement agreements are essentially contracts, the court will apply contract interpretation principles to the contract language in question and need not defer to WERC's conclusions in this regard.

## 2. Breach of Contract Claim

The interpretation and construction of a contract is a question of law. Zimmerman v. Dept. of Health & Soc. Servs., 169 Wis. 2d 498, 507 (Ct. App. 1992). When interpreting a contract, the court must determine the true intentions of the parties as stated in the contract. State ex. rel. Journal/Sentinel Inc. v. Pleva, 155 Wis. 2d 704, 711 (1990). When contract terms are unambiguous, the contract is construed as it stands and the court will not attempt to construe the contract in a different way. United States Fire Ins. Co. v. Ace Baking Co., 164 Wis. 2d 499, 502 (Ct. App. 1991); Muehlenbein v. West Bend Mutual Insurance Co., 175 Wis. 2d 259, 264 (Ct. App. 1993). A contract term is ambiguous only if the term is "fairly susceptible of more than one construction." Borchardt v. Wilk, 156 Wis. 2d 420, 427 (Ct. App. 1990).

## 3. The Settlement Agreement

The Union argues in its petition that the payment of "net" income means the payment of income after all taxes have been deducted from the gross payment, that calculation necessarily being based upon Rost's total gross income for the year. WERC argues that its decision that the settlement clause in question is ambiguous and that the State's interpretation of the settlement language was

reasonable should be upheld. WERC argues that, because the State was unaware of any additional income earned by Rost at the time of the settlement, it was reasonable for the State to calculate Rost's tax obligations based on a total yearly net income of only \$5000. WERC references a letter written by the University to the Department of Employment Relations in 1992 explaining the basis for its tax calculation. Transcript of Record, Joint Exhibit 2, p.1.

However, this letter was not incorporated into the settlement agreement entered into by the parties one year earlier. It therefore merely explains how the State calculated Rost's gross settlement amount for tax purposes.

The court agrees with the hearings examiner that the language in question, "the employer will pay the grievant an amount to be determined as gross wages, which will yield a net amount of \$5000" is unambiguous. The language on its face requires the State to pay Rost \$5000 and requires the State to pay all additional expenses associated with having paid Rost a net amount of \$5000. The language clearly indicates that, no matter how much money the State must ultimately pay in gross wages and various deductions, taxes, etc., the end result will be that Rost receives a net payment of \$5000.

The settlement agreement does not indicate when the State should have calculated the deductions and tax expenses associated with the net settlement amount paid to Rost. However, the court concludes that only one reasonable interpretation may be applied to the settlement agreement. The agreement is therefore unambiguous regarding when the State should have calculated its tax obligations.

Wisconsin Administrative Code HSS 80.02(3) defines "gross income" as all income considered federal income under 26 C.F.R. Sec. 1.61-1. The federal regulations define "gross income" as "all income from whatever source derived." 26 C.F.R. 1.61-1; 26 U.S.C. §61 (1995 Supp.). "Net income" is defined as "gross income less items such as necessary expenses incurred or capital consumed in earning it." Helvering v. F & R Lazard & Co., 308 U.S. 252, 254 (1939). Estate of Walling v. Comm. of Internal Revenue, 373 F.2d 190, 193 (3rd Cir. 1967). Black's Law Dictionary more specifically defines "net income" as "that which remains after all allowable deductions, such as charges, expenses, discounts, commissions, taxes, etc., are made." Black's Law Dictionary, p. 938 (6th Ed. 1990) (emphasis added). Net income is synonymous with "taxable income." See Estate of Walling, 373 F.2d at 193; 26 U.S.C. §63. An individual's tax obligations are therefore calculated based upon that person's gross income as defined by Congress.

The settlement agreement in this case contemplated that Rost would receive \$5000 after all expenses associated with his gross income, including taxes, were paid by the State. As an employer, it would be reasonable for the State to calculate an employee's tax liability based upon the gross income wage paid to the employee (independent of other income received by the employee from other sources). This is because employment contracts are generally based upon a gross wage, not a net wage. The employee therefore assumes the risk of having to pay higher taxes if the employee earns additional money from other sources.

However, the settlement agreement in this case involves an agreement to pay a net amount of money, associated with an undetermined gross wage amount. By agreeing to pay Rost the net amount of \$5000, the State agreed to pay all taxes associated with the gross amount of this money.

The State therefore assumed the risk of having to pay increased taxes associated with Rost's total gross income. The State's letter explanation was not made part of the settlement agreement between the parties. If the letter or explanation were included as part of the settlement, the State's gross income calculation would have been correct and reasonable, and Rost would have assumed the risk that his total gross income for the year would increase his tax liability for the \$5000 settlement payment.

Absent the incorporation of the letter into the settlement agreement, the State's settlement obligation is clear: the State obligated itself to pay Rost \$5000 and to assume all tax obligations associated with this payment. WERC's interpretation of the settlement agreement was unreasonable. The State's tax obligation should have been calculated based upon Rost's gross income "from whatever source derived." The State's failure to determine Rost's gross income for the year did not remove its obligation to pay the proper amount of taxes associated with the \$5000 payment.

#### ORDER

For the reasons stated above, the court makes the following order:

The administrative decision of WERC, in which WERC concluded that the State did not commit an unfair labor practices activity by denying Rost's claim against the State for payment of additional settlement money, is reversed and the case remanded for a determination of the amount of money the State owes Rost because of tax payments made by Rost associated with the \$5000 settlement payment.

So ordered.

Dated and Mailed this 29th day of December, 1995.

By the Court

/s/ Stuart A. Schwartz  
Stuart A. Schwartz  
Circuit Judge  
Branch 15

#### ENDNOTES

- 1/ \$420.75 in social security, \$79.25 in State taxes, and \$0.00 in Federal income taxes.
- 2/ 301.75 in additional state taxes and \$825.00 in federal taxes.
- 3/ Rost held three part-time jobs and, furthermore, received annuity income.