RHODE ISLAND Lawyers Weekly

Work-sharing benefits not 'wages' for workers' comp

By: Barry Bridges April 30, 2019

Bringing an end to years of litigation on the question, the state Supreme Court has held that work-sharing benefits may not be included when calculating an employee's "average weekly wage" for workers' compensation benefits.

Work-sharing benefits under G.L. §28-44-69 are designed to allow an employer to avoid layoffs by reducing the hours worked by a specific group of employees, with the state then paying those employees some portion of the difference between their actual income and what they would have received if they had worked full time.

A recipient of such benefits, Mark D. Powers, filed for workers' compensation after he injured his knee on the job for the Warwick Public Schools and was unable to work for several months. He challenged the fact that his work-sharing payments were not included in calculating his average weekly wage for workers' compensation under G.L. §28-33-20.

But a judge of the Workers' Compensation Court found that work-sharing payments are "tantamount to unemployment compensation benefits" and were therefore properly excluded from Powers' average weekly wage. The Appellate Division affirmed.

The state Supreme Court reached the same conclusion through an opinion authored by Justice William P. Robinson III, whose analysis largely focused on what he deemed to be the "commonsense understanding" of the meaning of "wages" — payment for labor or services rendered.

"Work-sharing benefits are the antithesis of monies paid for hours worked," he wrote. "They are by definition monies paid for hours not worked; and they are monies paid by the state, not by the employer. We … simply need not go beyond this ordinary understanding of the term 'wages' to reach our conclusion in the instant case."

Echoing the lower courts, Robinson likened work-sharing benefits to unemployment compensation, which is excluded from workers' compensation calculations. He declined to adopt the petitioner's position that work-sharing payments are more akin to holiday or vacation pay.

constrained by the statute before us," he added.

The 18-page decision is *Powers v. Warwick Public Schools*, Lawyers Weekly No. 60-034-19. The full text of the ruling can be found here.

Representing Powers were Christine M. Curley of North Kingstown, Stephen J. Dennis of Providence and Carolyn A. Mannis of Providence. Francis T. Connor and Nicholas R. Mancini, both of Warwick, were attorneys for the school district.

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