

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 6, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP491
STATE OF WISCONSIN**

Cir. Ct. No. 2023CV5093

**IN COURT OF APPEALS
DISTRICT I**

STEPHEN COOPER,

PLAINTIFF-RESPONDENT,

V.

ALRO STEEL CORPORATION,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
GLENN H. YAMAHIRO, Judge. *Affirmed.*

Before Donald, C.J., Geenen, and Petrashek, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Stephen Cooper, a former employee of Alro Steel Corporation (“Alro”), alleges on behalf of himself and all other similarly situated

Alro employees that Alro engaged in systemic violations of Wisconsin’s wage payment and collection laws. Cooper alleges that Alro engaged in an unlawful practice of “timeclock rounding.” Specifically, he alleges that, for payroll purposes, Alro maintained a practice of rounding an employee’s actual start time up or down to match that employee’s scheduled shift. The circuit court certified the class, which consists of all current and former, hourly paid, non-exempt production employees employed by Alro in Wisconsin at any time on or after July 11, 2021 (“Production Employees”).

¶2 Alro appeals the circuit court’s order granting Cooper’s motion for class certification. Alro argues that Cooper failed to meet his burden to prove that the class meets the class certification requirements of commonality, typicality, adequacy of representation, predominance, and superiority. We reject Alro’s arguments and affirm.¹

¹ None of the briefs submitted on appeal comply with WIS. STAT. RULE 809.19(8)(bm) (2023-24), which addresses the pagination of appellate briefs. See *id.* (specifying that when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). This rule was amended to its current form in 2021. See S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021). The reason for the amendment is that briefs are now electronically filed in PDF format and are electronically stamped with page numbers when they are accepted for eFiling. The pagination requirements ensure that the numbers on each page “will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of a brief. Supreme Court Note, 2021, WIS. STAT. RULE 809.19.

We also observe that Alro’s briefs cite to its appendix rather than the record. Briefs must include “appropriate references to the record.” WIS. STAT. RULE 809.19(1)(d). While an appellant must file an appendix that contains “limited portions of the record essential to an understanding of the issues raised,” RULE 809.19(2)(a), we require that briefs cite to the record rather than the appendix because “[w]e are limited to matters in the record and will not consider any materials in an appendix that are not in the record.” *Roy v. St. Lukes Medical Center*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (citation modified). The materials in Alro’s appendix are contained in the record, but nonetheless, we remind the parties to comply in the future with all applicable rules of appellate procedure as failure to do so may result in sanctions.

(continued)

BACKGROUND

¶3 On July 11, 2023, Cooper filed a complaint on behalf of himself and all other similarly situated Production Employees alleging that Alro engaged in systemic violations of Wisconsin’s wage payment and collection laws at its three Wisconsin facilities. Specifically, Cooper alleges that Alro unlawfully maintained a practice of timeclock rounding, and as a result, Alro failed to pay him and other Production Employees for compensable work.

¶4 Alro is a steel supply company that warehouses, cuts, fabricates, and sells steel to various manufacturing businesses. Alro operates three Wisconsin facilities which are located in Milwaukee, Oshkosh, and Racine. During the relevant period, Alro employed at least 295 Production Employees, including Cooper, in Wisconsin.² Alro’s policies, procedures, actual practices, and workplace rules—including attendance, safety, timekeeping, and payroll rules—are uniform across these facilities.

¶5 Under Alro’s attendance policy, Production Employees are expected to be “ready to work” at their scheduled shift start times. “Ready to work” in this context requires that the Production Employee has donned all necessary personal protective equipment (“PPE”) pursuant to OSHA regulations and Alro safety standards, such as hard hats, safety glasses, gloves, and safety boots, and is physically present for a beginning-of-shift meeting at the scheduled shift start time. Failure to wear the required PPE subjects Production Employees to

All references to the Wisconsin Statutes are to the 2023-24 version.

² Although Alro operates in other states, our references to Alro in this opinion refer only to its three Wisconsin facilities unless otherwise specified.

discipline. Additionally, tardiness to the beginning-of-shift meeting by even one minute subjects a Production Employee to disciplinary action and disqualification from receiving “Attendance Wages,” an extra hourly wage of at least \$2.00 per hour given to Production Employees with perfect attendance each workweek. Production Employees were also required to inspect their work equipment and machinery every day prior to using certain machines.

¶6 The attendance policy also requires Production Employees to work continuously until their scheduled shift end times. That is, this particular rule requires continuous work from an employee’s scheduled shift start time until that employee’s scheduled shift end time without regard to when the employee clocked in and clocked out. An employee who leaves their work area before their scheduled shift end time is subject to discipline.

¶7 Alro maintains uniform timekeeping, attendance, and payroll policies, procedures, and practices. It requires Production Employees to record their actual time worked for payroll and benefits purposes by recording the time work begins and ends. Production Employees are required to record this time by “punching” in and out via Alro’s payroll system. Alro requires its payroll coordinators and a supervisor to review payroll records weekly for all Production Employees to ensure that their punch times accurately reflect their actual time performing compensable work. Although the payroll system records the exact time an employee punches in or out, an employee’s punch times were rounded up or down to the shift start and end times under certain conditions, meaning that the employee would be paid only for the number of hours of their scheduled shift, regardless of when they punched in or out.

¶8 Alro has therefore programmed its payroll system to deal with “gap time”—the period between an employee’s punch-in time and the scheduled shift start time and the period between an employee’s punch-out time and the scheduled shift end time—by uniformly rounding Production Employees’ timekeeping records. If an employee punches in fifteen minutes or less prior to their scheduled start time, the payroll system will calculate hours worked from the scheduled start time rather than the punch time. Similarly, if an employee punches out within nine minutes after their scheduled shift end time, the payroll system calculates hours worked only to the scheduled shift end time.³

¶9 Different procedures apply outside of these gap times. If an employee punches in more than fifteen minutes early, punches in late, or punches out more than nine minutes after their shift end, the payroll system will calculate hours worked from the punch time, rounded to the nearest tenth of an hour (six minutes).

¶10 While employed at Alro, Cooper would customarily arrive prior to his scheduled shift time, punch in, then proceed immediately to the locker room to don his required PPE before heading to the production floor to begin performing his assigned tasks until the beginning-of-shift meeting began. The superintendent of the Oshkosh facility frequently saw Cooper performing various allegedly compensable work tasks prior to his scheduled shift time. Cooper was not the only employee that performed allegedly compensable work tasks during the gap

³ For example, if a Production Employee is scheduled for an 8 a.m.-to-5 p.m. shift and they punch in between 7:45 a.m. and 7:59 a.m., the payroll system will round their start time up to 8 a.m. Similarly, if that employee punches out between 5:01 p.m. and 5:09 p.m., the payroll system will round their end time down to 5 p.m.

time. Cooper routinely observed other Production Employees on his shift either donning their PPE or out on the production floor performing allegedly compensable work tasks such as inspecting machinery until the beginning-of-shift meeting began. The Oshkosh superintendent acknowledged that Cooper and other Production Employees routinely punch in as soon as they enter Alro's facility, and that this is usually at least a few minutes prior to employees' scheduled shift start time. After clocking in, Production Employees would customarily go to the locker room to don their required PPE and then either go directly to the beginning-of-shift meeting or begin performing allegedly compensable work tasks on the floor. The Milwaukee superintendent also observed Production Employees customarily punch out immediately before leaving Alro's facility, which is at "or after" their scheduled shift end times.

¶11 For purposes of the class certification proceedings, a representative sample of ten Production Employees' timekeeping records was reviewed to determine the difference in duration between their actual punch-in and punch-out times and the duration between their punch-in and punch-out times as rounded by the payroll system. The representative sample favored Alro by approximately 1,473.50 hours over the relevant period,⁴ an average of more than 147 hours per employee.

¶12 On February 27, 2025, the circuit court granted Cooper's motion for class certification and issued a nineteen-page written order. The order set forth in

⁴ Although the time period covered by the representative sample is unclear in the record, we observe that the complaint, for purposes of identifying the class, states that the relevant time period is "the two (2) year period immediately preceding the filing of this Complaint."

great detail the circuit court’s reasons for granting the motion and thoroughly described the evidence in support of its decision.

¶13 Alro appeals. Additional factual details will be discussed as they become relevant.

DISCUSSION

¶14 In Wisconsin state courts, class actions are governed by WIS. STAT. § 803.08. “A [circuit] court’s decision whether to certify a class under [§] 803.08 is vested in its reasoned discretion.” *Hermanson v. Wal Mart Stores, Inc.*, 2006 WI App 36, ¶3, 290 Wis. 2d 225, 711 N.W.2d 694. “We will uphold a [circuit] court’s determination if it examines the relevant facts, applies a proper legal standard and, in a rational process, reaches a conclusion that a reasonable judge could reach.” *Cruz v. All Saints Healthcare Sys., Inc.*, 2001 WI App 67, ¶11, 242 Wis. 2d 432, 625 N.W.2d 344.

¶15 We begin with the language of the statute. *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Before an action may be certified as a class action under WIS. STAT. § 803.08(1), there are four statutory prerequisites that must be met, namely, numerosity, commonality, typicality, and adequacy of representation. Sec. 803.08(1)(a)-(d). In addition to satisfying these requirements, a putative class must also satisfy one of the requirements outlined in § 803.08(2). In this case, the Production Employees allege that they satisfy § 803.08(2)(c). To satisfy § 803.08(2)(c), the plaintiffs must make an additional showing that (1) the questions of law or fact common to the members of the proposed class predominate over questions affecting only individual class members, and (2) a class action is superior to other available methods of resolving the controversy.

¶16 Alro concedes that Cooper satisfied the numerosity requirement. Accordingly, we address each of the other statutory requirements and conclude that the circuit court did not erroneously exercise its discretion when it certified this case as a class action.

I. Commonality

¶17 To satisfy the commonality requirement of WIS. STAT. § 803.08(1)(b), the proposed class’s claims “must depend upon a common contention ... of such a nature that it is capable of class[-]wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” **Wal-Mart Stores, Inc. v. Dukes**, 564 U.S. 338, 350 (2011).⁵ “What matters to class certification is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Id.* (citation modified). Commonality is not defeated simply because common questions of law or fact do not resolve every issue in the case. **Phillips v. Sheriff of Cook Cnty.**, 828 F.3d 541, 551-52 (7th Cir. 2016); *see also* **McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.**, 672 F.3d 482, 490-91 (7th Cir. 2012) *abrogated on other grounds by* **Phillips**, 828 F.3d at 559.

⁵ When analyzing Wisconsin statutes governing class action lawsuits, we are permitted to look to federal cases because WIS. STAT. § 803.08 was revised and adopted “with the express purpose of harmonizing Wisconsin’s class action statute with the federal class action statute and federal case law.” **Harwood v. Wheaton Franciscan Servs., Inc.**, 2019 WI App 53, ¶2, 388 Wis. 2d 546, 933 N.W.2d 654; *see also* **Luckett v. Bodner**, 2009 WI 68, ¶29, 318 Wis. 2d 423, 769 N.W.2d 504 (explaining that when a state rule mirrors a federal rule, state courts may “consider federal cases interpreting the rule to be persuasive authority”).

¶18 Alro argues that Cooper cannot satisfy the commonality requirement because determining its potential liability for unpaid pre- and post-shift gap time requires an employee-by-employee analysis of punch time entries and gap time tasks to determine whether the employee was doing compensable work during that time. In other words, Alro argues that an employee’s gap time is only compensable if they were performing compensable work during the gap time, and to determine whether an individual employee should have been compensated for any particular gap time, it must be determined what that individual employee was doing during each gap time period.

¶19 The circuit court rejected Alro’s argument. It found that a common question existed with respect to whether Alro’s practice of timeclock rounding was permitted under applicable Wisconsin statutes and regulations. The circuit court further found that, assuming Wisconsin law does permit Alro’s timeclock rounding practice, whether Alro’s rounding policy was used in a neutral manner is an additional common question.⁶ Finally, the circuit court also highlighted “[t]he validity of whether [the Production Employees] are entitled to compensation for time spent donning PPE after punching in” was a question common to the class.

¶20 The circuit court observed that WIS. STAT. § 109.03 requires employers “as often as monthly pay to every employee ... all wages earned by the employee,” and that “each employee shall have a right of action against any employer for the full amount of the employee’s wages due on each regular pay day ... and for increased wages as provided in § 109.11(2).” It also noted that WIS.

⁶ A “neutral” timeclock rounding system is one which does not favor either the employer or the employee. See *Corbin v. Time Warner Entertainment-Advance/Newhouse P’ship*, 821 F.3d 1069, 1078 (9th Cir. 2016).

ADMIN. CODE § DWD 272.11(d) (through Aug. 2026)⁷ requires “[e]very employer to make and keep ... payroll or other records for each of their employees which contain [the] ... time of beginning and ending of work each day.”

¶21 The record evidence established that Alro required all Production Employees to record their actual time worked for payroll and benefits purposes by recording the time work begins and ends by punching in and out using the payroll timeclock system. The court also considered the evidence provided by Cooper that he and other employees performed allegedly compensable work tasks after punching in, but before their scheduled shift times. Considering these facts, the circuit court reasonably inferred that “Alro’s timekeeping records accurately reflected the times that employees’ compensable work began and ended each workday.” The circuit court then applied the legal standard set forth above and reasonably concluded that “because Alro maintained a consistent timekeeping policy throughout the applicable time period, liability may readily be established with common proof.”

¶22 Alro contends that the circuit court erred in finding commonality because “[f]ederal courts examining allegations identical to Cooper’s have uniformly refused to grant class certification or have held such certification to be reversible error.” Those cases are distinguishable. Alro relies primarily on ***Ferreras v. American Airlines***, 946 F.3d 178, 185 (3d Cir. 2019), which held that the question of “whether hourly [] paid American [Airlines] employees at Newark airport are not being compensated for all hours worked” could not be proven solely by common evidence about the timekeeping system because “a yes or no

⁷ All references to WIS. ADMIN. CODE § DWD are to the August 2026 register.

answer tells us nothing about actual common work habits[.]” However, the putative class at issue in *Ferreras* included three separate categories of employees—fleet service employees; mechanics; and passenger service and gate agents, each of which entailed vastly different responsibilities. *Id.* at 181. Here, however, the class is composed only of Production Employees who all work in similar production positions with similar production responsibilities, and are subject to the same timekeeping and payroll procedures, so common evidence is more likely to resolve more questions in this case than it would have in *Ferreras*.

¶23 Moreover, as the circuit court reasoned, the persuasive value of *Ferreras* is diminished because the common evidence here is not limited to evidence of Alro’s timekeeping system. To the contrary, the record includes common evidence that all Production Employees were required to wear PPE prior to their scheduled shift times in order to satisfy OSHA requirements and Alro’s attendance policy.

¶24 Alro’s timekeeping system applies to all Production Employees. Resolving the common questions identified by the circuit court will establish “in one stroke” whether Alro is liable to its Production Employees for unpaid wages and/or overtime pay, and the only individual inquiries will be to determine damages. *See Dukes*, 564 U.S. at 350; *McReynolds* 672 F.3d at 490-91.

¶25 Alro further asserts that the circuit court’s reliance on the PPE requirement was misplaced. Alro states that Production Employees are not required to put on or take off their PPE on-site; Production Employees can and do don and doff PPE off-site (e.g., at home). Alro claims that Production Employees engaged in a wide variety of activities during the gap periods and that the record

established that there was “as much variety in when employees donned and doffed PPE as there was in the employees’ other pre- and post-shift activity.”

¶26 Contrary to Alro’s claim, the question of whether certain common categories of pre- or post-shift activity constitutes compensable work are common questions sufficient to sustain a class action. Our supreme court’s opinion in **McDaniel v. DOC**, 2025 WI 24, 416 Wis. 2d 516, 21 N.W.3d 749, is instructive on this point. In **McDaniel**, the supreme court held that the remarkably similar question of whether the Department of Correction (“DOC”) officers’ pre- and post-shift work was “sufficiently ‘integral and indispensable’ ... to be compensable,” satisfied the commonality requirement to certify the class in that case. **Id.**, ¶¶34-35. The DOC officers alleged that they were owed compensation for time spent in correctional facilities before and after their shifts. **Id.**, ¶1. The DOC required that officers complete a variety of activities before and after arriving at their post but did not pay the officers for that time. **Id.**, ¶4. “[N]ot all officers complete[d] the same activities in the same order or [took] the same amount of time.” **Id.**, ¶6.

¶27 The officers brought a class action against the DOC, arguing that the pre- and post-shift activities they engaged in were “integral and indispensable” to their principal activities, and thus, they were compensable under the Wisconsin Administrative Code. **Id.**, ¶7; *see also* WIS. ADMIN. CODE § DWD 272.12(2)(e). The circuit court certified the class, and the supreme court held that it had not erroneously exercised its discretion in doing so, concluding that the common question raised by officers would “resolve an issue that is central to the DOC’s liability in one stroke.” **McDaniel**, 416 Wis. 2d 516, ¶35 (citation modified).

¶28 Similarly, in this case, Cooper has identified examples of categories of pre- and post-shift activities that he asserts are compensable work activities (e.g., donning and doffing PPE and performing mandatory machine inspection). Cooper has also provided evidence that he and other Production Employees engaged in these activities during gap periods. Determining whether these categories of activities constitute compensable work determines “in one stroke” whether Alro is liable for not paying Production Employees who performed that work during a gap period. See **Dukes**, 564 U.S. at 350. That is, if any category of activity is determined to not be compensable, then any claim based on that activity fails altogether.

¶29 On the other hand, if an activity is determined to be compensable, liability is established for all Production Employees that engaged in the activity during a gap period without compensation. If discovery later reveals that only certain types of Production Employees engaged in a particular compensable activity during gap time (e.g., only saw operators inspect machines during gap times), then subclasses can be used to further organize the class and limit the necessary individual inquiries. See WIS. STAT. § 803.08(7). Remaining individual questions, such as how frequently and for how long individual Production Employees engaged in compensable activities during gap periods, go to the extent of damages members of the class suffered, not whether the litigation will generate common answers to common questions that will drive the resolution of the litigation. See **McReynolds**, 672 F.3d at 490-91.

¶30 In sum, the record establishes that the circuit court examined the relevant facts, applied the proper legal standard, and using a rational process, reasonably determined that the commonality requirement was satisfied. **Cruz**, 242 Wis. 2d 432, ¶11.

II. Typicality

¶31 To satisfy the typicality requirement of WIS. STAT. § 803.08(1)(c), the claims or defenses of the representative parties must be “typical of the claims or defenses of the class.” In other words, Cooper’s claims must arise from the same practice or course of conduct that gives rise to the claims of the other Production Employees. See *Hammetter v. Verisma Sys., Inc.*, 2021 WI App 53, ¶20, 399 Wis. 2d 211, 963 N.W.2d 874. A named plaintiff’s claims are not required to be identical to those of the putative class, but instead, typicality is satisfied if the named plaintiff’s claims “have the same essential characteristics as the claims of the class at large.” *Id.*

¶32 Alro argues that “Cooper failed to establish typicality when the uncontroverted evidence shows that Alro employees used the time in question in variable and inconsistent ways.” In particular, Alro argues that Cooper’s gap time activities “were not typical of putative class members.”

¶33 The circuit court considered the record and reasonably determined that the typicality requirement was satisfied because the Production Employees’ claims, including Cooper’s, share the same essential characteristics. It explained that the Production Employees, including Cooper, were hourly paid, non-exempt employees that were subject to the same timekeeping, attendance, and payroll policies, and they all suffered the same alleged harm in the form of unpaid wages for allegedly compensable work. A named plaintiff’s claim is not required to be identical to the claims of the class members so long as the claims share the same essential characteristics. *Id.* Even if Cooper’s particular gap time activities and routine were different from other Production Employees, his legal claim that he was not paid for compensable gap time work is the same as all other class

members. Indeed, one of the common questions is whether Alro’s timeclock rounding practice is permitted *at all* under Wisconsin law and whether the *actual* punch-in and punch-out times recorded by the timeclock accurately recorded when Production Employees began and ended compensable work each workday under WIS. ADMIN. CODE § DWD 272.11(d).

¶34 Moreover, as we discussed when we addressed the commonality requirement, categories of pre- and post-shift gap time activities have been identified and may continue to emerge throughout the litigation, and Production Employees that engaged in those categories of activities can be further organized by subclasses if appropriate. However, the bedrock of each Production Employee’s claim remains the same as Cooper’s: that Alro did not pay them for compensable work activities performed during gap time. The record establishes that the circuit court examined the relevant facts, applied the proper legal standard, and used a rational process to reach the reasonable conclusion that the typicality requirement was satisfied. *Cruz*, 242 Wis. 2d 432, ¶11.

III. Adequacy of Representation

¶35 WISCONSIN STAT. § 803.08(1)(d) requires that “[t]he representative parties will fairly and adequately protect the interests of the class.” The primary criteria for determining adequacy of representation are: “(1) whether the plaintiffs or counsel have interests antagonistic to those of absent class members; and (2) whether class counsel are qualified, experienced and generally able to conduct the proposed litigation.” *Cruz*, 242 Wis. 2d 432, ¶18.

¶36 Alro does not challenge the adequacy of Cooper’s attorney or his law firm to represent the interests of the class. Instead, Alro argues that Cooper is not an adequate representative of the class because he “did not engage in the same

activities or suffer the same injury as the members of the putative class[.]” Therefore, Cooper “would not have an interest in proving legally or factually that their activities were in fact compensable.” The circuit court concluded that Cooper was an adequate representative of the class because he has the same legal claims as the rest of the Production Employees. As a result, “the potential for any antagonism between Cooper and the proposed class is drastically limited, if not eliminated[.]”

¶37 As with the typicality requirement, the named plaintiff is not required to have identical claims to the rest of the putative class members to be an adequate representative; the adequacy of representation requirement is designed to ensure that there is no conflict of interest between the named plaintiff and the rest of the class. *See id.* Because Cooper has the same essential legal claim as the rest of the Production Employees, there is no antagonism between him and the rest of the class. Furthermore, that some Production Employees may have performed certain categories of activities during gap time that Cooper did not perform does not necessarily make Cooper’s claims “antagonistic” to the claims of Production Employees that did engage in that activity. It is not the case that determining one activity is compensable would lead to another activity being determined as non-compensable such that an absent class member’s claim would fail if Cooper’s claim succeeded. “So long as [Cooper] has a general understanding of the nature of the class claims alleged,” he can serve as class representative. *See id.* The record establishes that Cooper has such an understanding, and his interests and claims are not antagonistic to any of those of other Production Employees.

IV. Predominance

¶38 Once the class satisfies the requirements enumerated in WIS. STAT. § 803.08(1), the class must also satisfy one of the requirements enumerated in § 803.08(2). Cooper alleges that the class satisfies § 803.08(2)(c), which entails an additional showing that the questions of law or fact common to the members of the proposed class predominate over questions affecting only individual class members and that a class action is superior to other available methods of resolving the controversy.

¶39 We consider the predominance requirement first. When analyzing predominance, a court must ask whether ““common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.”” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (citation omitted). “The ... predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Products Inc. v. Windsor*, 521 U.S. 591, 623 (1997). A common question predominates over individual claims if “a failure of proof on the [common question] would end the case” and the whole class “will prevail or fail in unison.” *Amgen Inc. v. Connecticut Ret. Plans and Tr. Funds*, 568 U.S. 455, 460 (2013).

¶40 Alro argues that the circuit court erred because the inquiries into what employees were doing during the gap time and whether those activities are compensable would overwhelm any arguable common questions in the case, and federal appellate courts have reversed class certification on predominance grounds based on facts similar to those in this case. We disagree with Alro. The common questions identified by the circuit court predominate in this case.

¶41 The circuit court observed that, although there is evidence that Production Employees engaged in different pre- and post-shift activities, “the essential elements of the proposed class members’ claims are capable of being proved by common evidence that all Production Employees engaged in compensable activities when they donned and doffed PPE before and after they clocked in.” The circuit court also distinguished *Ferrerias* and other similar federal cases that Alro relied on because in this case, there are “certain additional facts that the prospective class may prove with predominately common evidence,” including the PPE requirement. Moreover, as we explained above, questions such as whether Alro’s timeclock rounding is permitted under Wisconsin law, whether Alro’s timeclock rounding is neutral, and whether activities commonly undertaken by Production Employees during gap times are compensable constitute common questions, the answers to which will end predominant aspects of the litigation.

¶42 We construe Alro’s argument to be that the circuit court should not have certified the class because scores of individual trials may need to take place in order to determine whether, and to what extent, each class member was damaged by Alro’s failure to pay for compensable work during gap times. However, individualized questions need not be absent in order for common questions to predominate. See *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). Predominance may be met “even though other important matters will have to be tried separately, such as damages[.]” *Bouaphakeo*, 577 U.S. at 453. Indeed, “scores of separate trials might be necessary to determine which class members were actually adversely affected by the policy and if they were, what loss each class member sustained.” *Bell v. PNC Bank, Nat’l Ass’n*, 800 F.3d 360, 379-80 (7th Cir. 2015). “At least it will not be necessary in each of those trials to determine whether [the employer] had an

illegal policy of denying pay[.]” *Id.* In **McReynolds**, 672 F.3d at 491, for example, the Seventh Circuit affirmed certification of a class of 700 members despite the fact that “hundreds of separate trials may be necessary to determine which class members were actually adversely affected by” the employer’s allegedly discriminatory practices. It reasoned that “at least it wouldn’t be necessary in each of those trials to determine whether the challenged practices were unlawful,” and that the lawfulness of the challenged practice could “most efficiently be determined on a class-wide basis[.]” *Id.*

¶43 It is true that individualized proof of what each Production Employee was doing during gap time will be pertinent to the question of what each class member is owed. Establishing what damages each class member is owed could require “scores of separate trials,” but liability for certain categories of unpaid work activities during gap times will not have to be established as to each individual. **Bell**, 800 F.3d at 379-80; **McReynolds** 672 F.3d at 491. Further, it is possible that these individual inquiries could be eliminated entirely by resolving common class questions. For example, there would be no need to inquire how frequently and for how long individual members of the class performed a particular activity during gap times if that activity is determined to be non-compensable.

¶44 The record establishes that the circuit court examined the relevant facts, applied the proper legal standard, and used a rational process to reach the reasonable conclusion that the predominance requirement was satisfied. **Cruz**, 242 Wis. 2d 432, ¶11.

V. Superiority

¶45 Finally, the class representatives must show that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. WIS. STAT. § 803.08(2)(c). Superiority is satisfied where the class action ““would achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.”” *Amchem*, 521 U.S. at 615 (quoting FED. R. CIV. P. 23, Adv. Comm. Notes to 1996 Amend. § (b)(3)).

¶46 Alro argues that the circuit court erred in finding that a class action was superior to other available methods of adjudication because “the need for highly individualized proofs ... would render the case unmanageable.” Alro relies on *Hermanson*, 290 Wis. 2d 225, ¶¶4-5, to support its argument. In *Hermanson*, the employees alleged that they were not paid when they worked through all or a portion of their meal or rest periods. *Id.* The plaintiffs in *Hermanson* claimed that their complaints could be proven based on computerized time and payroll records. *Id.* However, whether or not an employee worked through a meal break was tracked by the individual employee, and not all employees were scrupulously accurate in punching in and out for meal and rest periods. *Id.* We rejected the plaintiffs’ class certification effort and held that the circuit court did not erroneously exercise its discretion in denying class certification because of the unreliability of the self-generated records of the individual employees. *Id.*, ¶¶5-6.

¶47 Here, there are other factors at play that make the class action more manageable. The payroll records relied upon by Cooper and the Production Employees are generated and maintained by Alro. As the circuit court reasonably

concluded, Alro’s attendance policy, coupled with Alro’s expectation that employees would begin engaging in compensable work as soon as they clock in and continually work until they clocked out, the fact that payroll records must be reviewed by a supervisor, as well as Alro’s legal obligation under WIS. ADMIN. CODE § DWD 272.11(d) to keep accurate payroll records, collectively establish a reasonable inference that Alro’s payroll records accurately reflect the time the Production Employees spent performing compensable work. This lessens the need for individualized proof and makes the class action proceedings much more manageable than it would have been in *Hermanson*. To the extent that individualized damages calculations must be done, this may be mitigated by the use of subclasses and relatively simple calculations extrapolated from Alro’s payroll records.

¶48 For these reasons, we conclude that the case is well-suited for resolution as a class action, and class resolution is superior to other available methods of resolution. The circuit court did not err by concluding the same.

CONCLUSION

¶49 At the class certification stage, a court’s role “is not to adjudicate the case; rather, it is to select the method best suited to adjudication of the controversy fairly and efficiently.” *Amgen*, 568 U.S. at 460 (citation modified). For the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion in certifying the class of Production Employees. The circuit court considered the relevant facts, applied the correct legal standard, and used a rational process to reach a conclusion that a reasonable judge could reach. *Cruz*, 242 Wis. 2d 432, ¶11.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)5.

