WISCONSIN SUPREME COURT
TUESDAY, APRIL 8, 2014
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Jefferson County Circuit Court decision, Judge William F. Hue, presiding.

2012AP2196 Weissman v. Tyson Prepared Foods

This wage claim case arises from a class action filed by six workers, including Jim Weissman, against their employer, Tyson Prepared Foods, Inc. (Tyson). Tyson operates a meat processing plant in Jefferson County. The employees contend they are entitled to compensation for the time spent putting on ("donning") and taking off ("doffing") sanitary and protective equipment and clothing and walking to work stations.

In reviewing the case, the Supreme Court examines the complicated interplay between the relevant regulations, case law, and state and federal law.

Some background: The circuit court entered summary judgment in favor of Tyson. The Court of Appeals reversed and remanded, ruling that the donning and doffing under the circumstances presented is compensable (subject to any potential "de minimis" argument that might be available to Tyson on remand).

Tyson appealed to the Supreme Court. The Court of Appeals said that Tyson's question is one of first impression in the Wisconsin courts: "Whether pre- and post-shift donning and doffing of generic work clothing that is neither extensive in nature, nor unique to the specific task performed, is non-compensable time under Wisconsin Statute § 103.02 and the Wisconsin Administrative Code Section Department of Workforce Development 272.12, because such work clothing is not 'integral' and 'indispensable' to employees' principal work …activities."

As a company policy, Tyson requires plant employees to don and doff some combination of the following: hair nets; beard nets, if applicable; frocks ("like a coat with snaps in front"); vinyl gloves; vinyl sleeves; bump caps (lightweight hard hats); safety glasses; ear plugs; and "captive shoes" (*i.e.*, shoes worn only in the plant and no place else) or rubber boots or rubbers over shoes, and in some cases steel toed shoes.

The frocks and bump caps are color coded by work area or by responsibility of the wearer. Certain of these items are worn at least in part to prevent contamination of food. Employees are not paid for at least some of the time they spend donning and doffing these items. Similarly, they are not paid for at least some of their time travelling on company property after donning and before doffing.

The employees argue that their "preparatory and concluding activities" of donning and doffing at either end of the work day, as well as the time they spend walking to and from work stations after donning or before doffing these items, should be counted as "integral parts" of "principal activities" under Wis. Admin. Code § DWD 272.12(2)(e), and therefore compensable.

The circuit court disagreed, concluding that, in the absence of Wisconsin precedent interpreting § DWD 272.12, the court should follow the definitions of activities "integral" to "principal activities" provided in some federal case law interpreting the Fair Labor Standards Act (FLSA), which requires that items donned and doffed be "unique and extensive."

The Court of Appeals reversed, concluding that "the donning and doffing of this equipment and clothing at the Tyson plant is required by Tyson in order for the employees to perform their principal activities, is closely related to those activities, and is indispensable to their performance."

The Court of Appeals was not persuaded by Tyson's claim that the court should follow certain federal court decisions interpreting the FLSA, noting that those decisions are not unanimous.

Tyson took the case to the Supreme Court. Tyson contends that the Court of Appeals' decision "substantially unsettles the law because it contravenes the plain text of the WIS. ADMIN CODE § DWD 272.12(2)(e), by failing to give effect to the plain meaning of the legally operative terms, 'integral,' and 'indispensable.'"

Tyson contends that as "a consequence of that flawed analysis, the Court of Appeals wrongly substituted a potentially limitless standard for compensable work in place of the understanding of the core term 'integral' used by many other courts in analyzing whether certain preliminary and postliminary activities are compensable."

A decision in this case is expected to have implications for many employers and employees statewide.