WISCONSIN SUPREME COURT
October 28, 2019
1:30 p.m.

2018AP1681 Steven J. Piper v. Jones Dairy Farm

This case, taken on a petition to bypass the Court of Appeals, asks the Supreme Court to determine whether Wisconsin law requires employers to compensate employees for donning/doffing and walking time if the issue was negotiated as part of the creation of a collective bargaining agreement. This case concerns a Jefferson County Circuit Court decision, Judge William F. Hue presiding, that denied Jones Dairy Farm's motion for summary judgment on employees' claims for payment for donning/doffing/walking activities.

This case asks the Supreme Court to clarify if there is a collective bargaining exception to the enforcement of wage statutes and regulations under Wisconsin law. A 2016 Supreme Court case that resulted in no majority opinion considered a similar issue about the compensability of donning/doffing time, with four justices indicating in separate concurring and dissenting writings that there was such an exception, but the court not explicitly ruling that such an exception existed. See United Food and Comm. Workers Union, Local 1473 v. Hormel Foods Corp., 2016 WI 13, 367 Wis. 2d 131, 876 N.W.2d 99. The circuit court in this case concluded that no such exception existed under Wisconsin law. Jones Dairy Farm, a Fort Atkinson food production facility, asks the Supreme Court to clarify whether it recognized such an exception in the separate writings in Hormel.

For decades, the employees at Jones Dairy Farm have been represented by United Food and Commercial Workers International Union, Local 538 (the Union). According to Jones Dairy Farm, at one point in time, the collective bargaining agreement (CBA) between Jones Dairy Farm and the Union provided that each employee would receive a daily credit of 12 minutes of paid time for donning and doffing work clothes. In the 1982 CBA, the parties agreed to reduce the amount of credited donning and doffing time to 6 minutes, in return for an increase in employee base hourly wage. In subsequent CBAs, according to Jones Dairy Farm, the parties followed the same pattern with respect to the donning and doffing provision: the Union consistently put forth proposals seeking extra pay for donning and doffing time, and the parties would ultimately agree to eliminate the donning and doffing provision completely in exchange for Jones Dairy Farm agreeing to other proposals that increased the employees' base hourly wage. Thus, from 1985 to 2013,[1] Jones Dairy Farm's employees did not receive compensation for the time spent donning and doffing work clothes and walking to and from their work stations.

In 2010, Union member Steven J. Piper and a number of other Jones Dairy Farm employees filed a class action lawsuit in the Jefferson County circuit court, alleging that Jones Dairy Farm's failure to pay employees for their donning/doffing and walking time violated Wisconsin law.

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[1] In November 2013, Jones Dairy Farm changed its time-clock procedures so that the donning/doffing and walking time is considered part of the work day for which its employees are compensated.

Jones Dairy Farm filed a motion for summary judgment. The circuit court denied the motion. It ruled that under Hormel and Weissman v. Tyson Prepared Foods, Inc., 2013 WI App 109, 350 Wis. 2d 380, 838 N.W.2d 502, the donning/doffing and walking activities were "integral and indispensable" to the principal activity of the employer, and therefore were compensable under Wis. Admin. Code § DWD 272.12(1)(a)1. The circuit court rejected Jones Dairy Farm's argument that it should not be required to compensate the plaintiffs for these activities because the Union had agreed in collective bargaining to waive such claims in exchange for other economic benefits. The circuit court concluded that there was no collective bargaining exception under Wisconsin law. It also rejected Jones Dairy Farm's argument that the donning and doffing times were too trivial to merit consideration, concluding that $675 per year per employee was significant to each individual employee. Finally, the circuit court rejected Jones Dairy Farm's reliance on equitable defenses (equitable estoppel, laches, waiver, and unjust enrichment) because it concluded that the legislature had banned contracts that failed to include compensation for donning/doffing and walking time, which policy would be thwarted by a court's resort to equitable defenses.

Jones Dairy Farm appealed and asked the Supreme Court to consider its appeal immediately, which the Supreme Court agreed to do. It asks in its appeal for the Supreme Court to clarify whether there is a collective bargaining exception to the requirement under Wisconsin law to pay employees for donning and doffing time that is integral to the principal activity of the employer. Specifically, Jones Dairy Farm's petition for bypass lists the following issues for Supreme Court review:

1. Are the Plaintiffs' state law claims for compensation for donning and doffing activities subject to the Parties' historical negotiations and enforcement of their collective bargaining agreements, thus rendering those activities non-compensable?
2. Are the Plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrines of equitable estoppel, laches, wavier, and/or unjust enrichment, in light of the many successive collective bargaining agreements Plaintiffs agreed to and benefited from, and thus rendering those activities non-compensable?
3. Are the Plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrine of *de minimis non curat lex,* thus rendering those activities non-compensable?