

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
 BRANCH 3

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GARY R. BAIER,

Plaintiff,

MEMORANDUM DECISION
Case No. 89 CV 0325

vs.

WISCONSIN LABOR AND INDUSTRY REVIEW
COMMISSION, AND MAINTENANCE GROUP, INC.,

Defendants.

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Gary Baier seeks judicial review of a decision of the Labor and Industry Review Commission finding that Baier was overpaid unemployment compensation benefits and requiring him to repay \$5390. The issue is whether the department properly imputed wages to Baier based upon its finding that, as fifty percent shareholder and president of Maintenance Group, Inc., he essentially manipulated his wages in order to assure eligibility for unemployment compensation. Also at issue is whether the three-year delay between the initial determination and the appeal hearing was so unreasonable as to violate Baier's right to due process. I conclude that the department could properly make a finding that wages should be imputed to Baier and that because Baier has shown no prejudice

in question and that eligibility and benefits must be computed on this basis. The department, in turn, argues that because Baier had a measure of control over his own "wages," it properly imputed wages to him for the period.

The basic facts as found by the department are apparently undisputed-- it is the inferences drawn from these facts that are currently before the court. In June, 1983, Baier, while employed by Schering Corporation, incorporated and worked for Maintenance Group, Inc. In mid-August, 1983, Schering laid-off Baier and he went to work full-time for Maintenance Group. Prior to the time he was laid-off, Baier drew \$15 per hour as wages from Maintenance Group. When he filed for unemployment compensation and began receiving benefits, however, he drew only \$90 per week. Immediately after the benefits period expired, his Maintenance Group wages increased to \$600 per week. Referring to the amounts customers paid to Maintenance Group during the time Baier received benefits and the fact that Baier, as a shareholder and officer in the corporation stood to benefit from the lower wage liability, the department concluded: "The remuneration paid to the corporation for [Baier's] services became a direct 'in kind' remuneration to him as shareholder and half owner of the corporation." Reviewing Baier's wage history with Maintenance Group

department has no authority to go beyond actual wages paid and to determine what wages the employer should have paid. The department, also citing public policy, relies primarily upon case law according the department great deference in defining the term "wages" for unemployment compensation purposes.

The public policy is, indeed, an important component of my review. Section 108.01 (1) and (2), Stats., provides in part:

Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his [or her] family. ...Employers and employes...should co-operate...to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided...to place workers more efficiently and to shorten the periods between jobs. ...

As a result of the important public policy concerns, the unemployment compensation act is to be liberally construed. Princess House, Inc. v. DILHR, 111 Wis. 2d 46, 62 (1983). However, the premise for this liberal construction is the protection of "workers who are economically dependent upon others in respect to their wage-earning status." Id. Baier does not fall into this category.

are "wages." The department argues here that as a shareholder, now apparently the only shareholder, and as an officer, Baier benefited from charging the corporation a reduced salary. Though he testified that the other shareholder, Koderl, was in charge of salary determinations, nothing indicates either that Koderl took a similar pay-cut or that there were any other pressing reasons for Baier's cut. Indeed, the only evidence presented suggests that the sole reason for the cut was that Baier was eligible for unemployment compensation. The department's conclusion that Baier had manipulated his wages is buttressed by the fact that immediately after his eligibility expired, his wage was restored to a level higher than that he received before becoming eligible.

In a closely held corporation such as Maintenance Group, the benefits or "advantages" accruing to the two shareholders as a result of a lower salary liability are obvious. Instead of paying out approximately \$5000 in wages, the corporation could retain these funds as capital. Though Baier indicated he received no dividends during this period, he admitted that not having to pay his usual salary enabled the corporation "to build sufficient capital to both meet its obligations, meet its payroll and continue in business and business picked up."

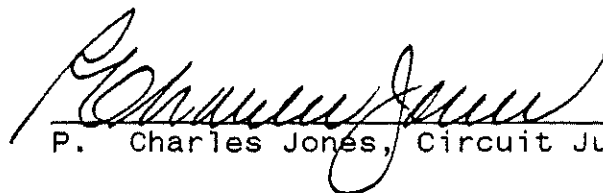
Though Baier raises a constitutional issue, he fails to adequately brief it. Because he also fails to present evidence of prejudice, I will not consider the issue further. See, County of La Crosse v. City of La Crosse, 108 Wis 2d 560, 572. Conclusory statements are not sufficient to address the constitutional violation alleged here.

I conclude that the department properly attributed wages to Baier at a rate of \$15 per hour for the work billed during the time in which he was collecting unemployment benefits and that he must now repay the \$5390 which the department ordered. The LIRC decision and order is affirmed.

It is so ordered.

Dated: 8-24-89

BY THE COURT:


P. Charles Jones, Circuit Judge