

STATE OF WISCONSIN CIRCUIT COURT MARQUETTE COUNTY

COUNTY OF MARQUETTE, TRANSCRIPT OF
 Plaintiff, ORAL DECISION

vs. Case Number: 02-CV-7

LABOR and INDUSTRY REVIEW COMMISSION, et al.,
 Defendants.

TRANSCRIPT OF ORAL DECISION

A transcript of the Oral Decision in regard to the above-
entitled action before, **MARQUETTE COUNTY CIRCUIT COURT JUDGE**
HONORABLE RICHARD O. WRIGHT, held at the Marquette County
Courthouse, Montello, Wisconsin, on August 13, 2002.

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APPEARANCES: **ATTORNEY BERNARD BULT**, Marquette County
Corporation Counsel, P.O. Box 186, Montello,
Wisconsin 53949, appearing in person and
representing the plaintiff.

ATTORNEY DAVID NANCE, P.O. Box 8126, Madison,
Wisconsin 53708, appearing telephonically
and representing the defendants.

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Jill M. Bartol, RPR
Marquette County

PROCEEDINGS

THE COURT: This is the matter of the County of Marquette, plaintiff, versus LIRC. This is a matter of certiorari, I believe.

MR. BULT: Yes. That is correct.

THE COURT: Appeal from a decision of the Labor and Industry Review Commission. Let's have the appearances formally here.

MR. BULT: Your Honor, Bernard Bult, Marquette County Corporation Counsel, is appearing on behalf of the plaintiff, Marquette County.

MR. NANCE: Your Honor, my name is Attorney David Nance. I am appearing on behalf of the Labor Industry Review Commission.

THE COURT: Okay. Without inviting reargument, I have read the briefs and reviewed the file, the record. Is there anything further, emphasis on the further, first from the plaintiff here?

MR. BULT: No, Your Honor. I believe that the facts were pretty much agreed to by both parties and the arguments that were made in the various briefs, I think, cover the issues. I would have no further argument.

THE COURT: Mr. Nance?

1 MR. NANCE: I agree, Your Honor. I think
2 that the briefs adequately frame the issues and the
3 matter is ready for decision.

4 THE COURT: I guess that there really is
5 one issue, that is interpretation of a statute. I
6 think that the plaintiff is correct in one part
7 here, is that there is no argument made by the --
8 how about the commission?

9 MR. NANCE: Commission or LIRC will do
10 just fine.

11 THE COURT: Well, we do not talk in
12 alphabet soup up here.

13 MR. NANCE: I have a hard time saying it
14 myself.

15 THE COURT: The Commission has not made
16 any argument about the burden or the -- whether or
17 not the Court should give any deference to the
18 Commission's decision on this, we presume that it
19 is entirely one of law, and it does also appear
20 that it is a case of first impression, so I don't
21 think that the Court owes any deference to the
22 Commission on the issue that is before the Court.
23 Am I correct that there is no argument about that?

24 MR. NANCE: No, Your Honor. We're not
25 going to contend that we have any experience in

1 this matter. We think that you're correct that the
2 matter is one for your decision **de novo**.

3 THE COURT: I also have to always note for
4 these kind of cases that the Court of Appeals does
5 not give two bits what my rulings are, other than
6 it causes them more work on occasion. The sole
7 issue is the interpretation of the statute, and
8 whether or not the particular individual employee
9 or employees or whether or not they are exempt
10 under the unemployment, you know, employment
11 compensation statute in Wisconsin.

12 First, I will mention that plaintiff's case, as
13 the Court notes Rojas vs. Fitch, in that case they
14 are not referring to any temporary emergency
15 personal. Bliss vs. ILHR -- that's what you used
16 to be called?

17 MR. NANCE: Yes.

18 THE COURT: It refers to a wholly
19 different exception, and I read through and it
20 makes no reference to any irregular aspect of the
21 employment exemption. The same is true with the
22 National Safety Associates case. I don't find --
23 except as they may be cited to support a position
24 that is generally what the statute is referring
25 to. I don't find them very helpful.

1 In any event, the Court does not see any
2 ambiguity in the statute. You can read the
3 statute. I think that it is clear on its face.
4 What the exception covers, and it covers persons
5 who are serving solely on a temporary basis, in
6 case of some of the enumerated disaster type
7 emergencies, the specific terms defined in class of
8 emergencies referred to.

9 Among the specific terms that are used to
10 define the class of emergencies is the term fire.
11 That is the only term, and in the enumerated class,
12 that could conceivably apply to an individual
13 disaster. That is the wrong way to put it, an
14 individual's, apostrophe s on the individual.
15 There we go. The others refer to the community in
16 a wider scale.

17 This Court believes that it is clear that the
18 statute has reference to those who would be
19 employed to handle unexpected general emergencies,
20 not the irregular yet frequent individual accidents
21 and trauma suffered by a few individuals at the
22 time. Neither does the exemption apply with the
23 nature of these employees by their terms of
24 employment. Temporary is not the same thing as
25 intermittent. Temporary is not the same thing as

1 irregular. Those terms are different. Temporary
2 means temporary.

3 The Court does not believe that it matters who
4 sets it and how the hours of employment are set.
5 They are getting paid when they are on call. It is
6 on a regular basis, those EMS, and the other
7 employees that we're referring to, they are not
8 solely called to work in emergencies, but are
9 employed to be ready for the call, as well.

10 I don't think that the Local 695 case, also
11 cited, is applicable for these reasons. The
12 statute uses the term solely, and it presumably
13 uses that term advisedly. That is a very limiting
14 term. The term solely, it accomplishes, in this
15 statute, a very limited exemption from coverage.
16 The agency's decision, the Court believes, should
17 be upheld and the petition be dismissed.

18 MR. NANCE: Thank you, Your Honor. Should
19 I submit an order for your signature?

20 THE COURT: The best way to do that really
21 is for the reasons stated on the record, the
22 petition is dismissed.

23 MR. NANCE: Very good.

24 THE COURT: That's all that you need to
25 do.

1 MR. NANCE: I will submit a draft and give
2 to Mr. Bult as to form and then get that to you.

3 MR. BULT: Very good.

4 THE COURT: Good bye.

5 (WHICH CONCLUDED THE PROCEEDINGS)
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STATE OF WISCONSIN)
) SS.
MARQUETTE COUNTY)

I, Jill M. (Gorsuch) Bartol, Registered Professional Reporter, in the State of Wisconsin, do hereby certify that the above foregoing is a true and complete transcript of the hearing held in the above matter on August 13, 2002.



Jill M. (Gorsuch) Bartol, RPR
County of Marquette
State of Wisconsin

Notary Public
State of Wisconsin
Until January 12, 2003