

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 29, 1996

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

NOTICE

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

No. 96-0735-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**THRESHERMEN'S MUTUAL INSURANCE
COMPANY and HILLSBORO SENTRY
ENTERPRISE,**

Plaintiffs-Appellants,

v.

**STATE OF WISCONSIN, LABOR AND INDUSTRY
REVIEW COMMISSION and WANDA BLOOR,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Reversed and remanded.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Hillsboro Sentry Enterprise and its workers' compensation insurer appeal from an order affirming a decision of the Labor

and Industry Review Commission (LIRC).¹ LIRC's decision awarded workers' compensation benefits to Wanda Bloor, a Sentry employee, for a work-related injury. The issue is whether LIRC properly awarded her the same compensation as a full-time employee would receive, although she only worked fourteen hours per week for Sentry. We review LIRC's decision independently, without deference to the trial court. *Davis v. Psychology Examining Bd.*, 146 Wis.2d 595, 599, 431 N.W.2d 730, 732 (Ct. App. 1988). Because we conclude that LIRC did not adequately explain the legal basis for its decision, we reverse and remand for redetermination.

The material facts are not disputed. Sentry employed four part-time workers, including Bloor, on hourly wages and without fringe benefits. Its four other employees were full-time, salaried and received fringe benefits. The part-timers did not have the same duties or work the same hours, but all worked on a regular schedule. Bloor also had another part-time job.

Under the statutory scheme, disability compensation is based on the hours "normally worked per week ... for the particular employment in which the employee was engaged at the time of the employee's injury." Section 102.11(1)(a), STATS. In *Carr's, Inc. v. Industrial Comm'n*, 234 Wis. 466, 471, 290 N.W. 174, 176 (1940), the supreme court interpreted this section to mean that a part-time employee could receive less compensation than a full-time worker only if he or she belonged to a distinct class of part-time employees, without, however, providing any precise definition of that term. To implement the principle set forth in *Carr's*, the Department of Industry, Labor and Human Relations (DILHR) enacted a regulation providing that an employee shall be compensated at a full-time rate "unless the employee is a member of a regularly scheduled class of part-time employees." WIS. ADM. CODE § IND 80.51(4).

If an employee is to be compensated as a part-time worker, the employee will receive a minimum of twenty-four hours per week compensation, unless the employee has voluntarily chosen part-time work and is not employed elsewhere. Section 102.11(1)(f), STATS. Because Bloor does work elsewhere, it is agreed that she should receive at least twenty-four hours per week compensation.

¹ This is an expedited appeal under RULE 809.17, STATS.

In support of its decision, LIRC noted that neither a labor union nor DILHR formally recognized Sentry's two types of employees, and that no other workers performed the same duties or worked identical hours as Bloor. However, LIRC did not define "regularly scheduled class," nor explain whether, or why, the criteria it identified must be present to establish the existence of one. In our view, the connection is not evident, and the meaning of a "distinct" or "regularly scheduled" class remains ambiguous in this context.

Consequently, we cannot determine how LIRC interprets its regulation, and whether that interpretation is reasonable in view of the underlying statutory standard. In *Village of Random Lake v. LIRC*, 141 Wis.2d 559, 567, 415 N.W.2d 577, 581 (Ct. App. 1987), we remanded because "determinations properly made by an administrative agency in the first instance have yet to be performed in this case. Without such determinations, this court cannot give the required weight to the administrative agency's value judgment based upon its expertise." Here, the situation is similar. LIRC has not clarified its legal standard and without benefit of that clarification, meaningful review is impossible. We remand to the circuit court with directions to remand to LIRC for further proceedings consistent with this opinion.

By the Court. – Order reversed and remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.