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Starcher, J., concurring in part and dissenting in part.	RORY L. PERRY II, CLERK	RORY L. PERRY II, CLERK
	SUPREME COURT OF APPEALS	SUPREME COURT OF APPEALS
	OF WEST VIRGINIA	OF WEST VIRGINIA

I agree with the majority's conclusion that the Wage Payment and Collection Act, *W.Va. Code*, 21-5-1, *et seq.*, applies to governmental and nongovernmental employers alike.

I disagree, however, with the majority's application of the Act to appellee Donald E. Ingram's situation. The Legislature designed the Wage Payment and Collection Act to help working people in the collection of compensation for services rendered. Through the Act, the "legislature has attempted to prevent employers from abusing their positions by compromising the wages of employees." *Britner v. Medical Security Card, Inc.*, 200 W.Va. 352, 355, 489 S.E.2d 734, 737 (1997) (*per curiam*). The Act "requires employers to pay the wages of working people who labor on their employer's behalf." *Mullins v. Venable*, 171 W.Va. 92, 96, 297 S.E.2d 866, 871 (1982).

W.Va. Code, 21-5-1(c) [1987] specifically says that "the term 'wages' shall also include then accrued fringe benefits capable of calculation and payable directly to an employee[.]" The statute goes on to state that "sick leave" is included as a "fringe benefit."¹ Stated simply, Mr. Ingram worked for his

¹*W.Va. Code*, 21-5-1(c) and (l) [1987] define "wages" and "fringe benefits" in the following manner:

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. . . . [T]he term "wages" shall also include then accrued fringe benefits capable of

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employer, and as part of his compensation for his services he accrued sick leave, a fringe benefit that the Act considers to be wages.

The Act defines “wages” as including sick leave, and specifies that employers are to pay wages to each employee when the employee ceases his or her employment. The majority opinion, however, holds that whether sick leave is payable as a wage is determined, not by the law, but by the employment contract. The majority opinion concludes that the City of Princeton’s unwritten policy to never pay police officers for their unused sick leave when they quit or retired governs the definition of “wages” due to Mr. Ingram.

The majority’s position is absolutely backwards. The statutes enacted by the Legislature control every employment contract that is entered into in West Virginia; the majority opinion is simply wrong in holding that the employment contract trumps the law. We held, in *Syllabus Point 2 of Huntington Water Corp. v. City of Huntington*, 115 W.Va. 531, 177 S.E. 290 (1935), that:

All general legal principles affecting contracts enter by implication into and form a part of every contract, as fully as if specifically expressed therein.

¹(...continued)

calculation and payable directly to an employee: Provided, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his employees which does not contradict the provisions of this article.

* * *

(l) The term “fringe benefits” means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.

In other words, the definition of “wages” in the Wage Payment and Collection Act is a part of every employment contract, including the contract between the parties to this case.

Furthermore, West Virginia law requires that employers put in writing the wages and fringe benefits that are to be paid to employees. The Act specifically says that an employer’s sick leave policy must be “in writing,” so as “to spare workers from trying to hit an ever-moving target.” *Robertson v. Opequon Motors, Inc.*, 205 W.Va. 560, ___, 519 S.E.2d 843, 849 (1999) (*per curiam*). *W.Va. Code*, 21-5-9 [1975] states that:

Every person, firm and corporation shall: . . .

(3) Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters.

It is undisputed in this case that the City of Princeton’s policy regarding sick leave -- that it never paid sick leave to an employee whose job terminated -- was unwritten. That means the policy was in violation of law, and should be unenforceable. Yet the majority suggests that because many police officers like Mr. Ingram knew about the unwritten policy through word of mouth, this breach of the law is excusable.

I believe that when the City of Princeton chose to redefine “wages” in its unwritten policy that excluded sick leave from payable fringe benefits, it refused to pay Mr. Ingram a fringe benefit for which he worked and that he earned. This refusal to pay Mr. Ingram the wages he earned through the use of an unwritten policy plainly violates the Act.

I therefore dissent to the majority opinion’s conclusion to deny Mr. Ingram his wages. I am authorized to state that Justice McGraw joins in this separate opinion.