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Case No. 74338-4-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RACHELLE HONEYCUTT & GABRIEL WESTERGREEN,

Petitioners-Appellants,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent,

and

PHILLIPS 66 COMPANY,

Intervenor-Respondent,

PHILLIPS 66 COMPANY'S ANSWER TO BRIEF OF AMICI CURIAE

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I. INTRODUCTION

The legislature enacted the Washington Family Care Act (WFCA) to provide *reasonable* paid leave for family care. The law accomplishes this goal by giving employees flexibility to use their accrued and available vacation, sick leave, and personal holidays to care for sick family members in certain circumstances. Employers are not required to offer any paid leave under the WFCA. If employees receive more than one type of paid leave covered by WFCA, employees may choose which type to use for family care.

The legislature did not permit employees to use disability leave for family care under WFCA as a matter of course. It instead crafted a narrow exception only for employees who have no option to receive compensation when they are ill except for disability leave. As the Department correctly determined, Appellants did not fit that narrow exception.

Amici propose a vast expansion of WFCA, urging the Court to allow use of disability leave for family care even among employees who do have other paid leave available for their own illness. Such an interpretation is at odds with the statute's plain terms.

II. ARGUMENT

The Washington Family Care Act permits employees to use "sick leave or other paid time off" when they need time away from work to

provide care for certain family members. RCW 49.12.270(1). The WFCA defines "sick leave or other paid time off" as "time *allowed* under the terms of . . . [a] collective bargaining agreement, or employer policy . . . for illness, vacation, and personal holiday." RCW 49.12.265(5) (emphasis added). Phillips 66 agrees with the Department: "time allowed for illness" includes compensation from vacation leave if the employer allows employees to use such time for illness.

The legislature limited use of disability leave under WFCA only to employees who have no option for compensation when they are sick except disability leave: "If paid time is *not allowed* to an employee for illness, 'sick leave or other paid time off' also means time allowed under the terms of . . . [a] collective bargaining agreement, or employer policy . . .for disability . . . ." RCW 49.12.265(5) (emphasis added). This caveat would be triggered when employers do not offer any vacation, sick leave, or personal holidays, or when employers do not allow use of vacation or personal holidays for an employee's own illness.

It is undisputed that Phillips 66 allows employees to use their accrued and available vacation and personal holidays to receive compensated time off when they are ill.[1] CP 726, 735-745, 748-764.

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[1] Appellants have not assigned error to the Director's finding that Phillips 66 employees may use vacation time for illness. App. Br. 2-3.

Because Appellants had paid time off they could use for their own illness other than disability leave, WFCA did not authorize their use of the Phillips 66 Disability Plan's short term disability benefit for family care.[2] CP 73-87, 732, 790-798, 898-906.

Amici's portrayal of Phillips 66's vacation leave and Disability Plan do not comport with the record. Amici assert that the collective bargaining agreement's (CBA) vacation provision was "specifically bargained" for rest and not illness, that vacation is "for another distinct purpose" other than illness, and that Phillips 66 is "disavowing" its obligations under the CBA by allowing multiple uses for vacation leave. Amici Br. 10, 12, 15.[3] But the record is clear and undisputed: Phillips 66 allows vacation to be used for multiple purposes, including illness. CP 735-45 (Honeycutt Dep., 22:11-13), 748-64 (Westergreen Dep., 25:13-16); CP 7, 17 (Finding of Fact 5.2, 5.4). Moreover, Amici (and Appellants) noticeably omit the full language of the CBA provision on vacation, which does not limit the use of vacation to a specific purpose,

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[2] The Phillips 66 Disability Plan's short term disability benefit was also excluded from coverage by WFCA because it is subject to ERISA and partially funded by an insurance contract. Phillips 66 Response Br. 12-13, 24-29; RCW 49.12.265(5).

[3] The Court should also disregard Appellants' assertion that the CBA limits use of vacation leave only for vacation and not for illness, App. Reply Br. 3-4, because the argument was raised for the first time on Reply.

but rather precludes employees from doing work during vacation leave for the purpose of enhancing their compensation:

> 10. Vacations are granted by the Company for the purpose of rest and recreation; ***no employee will be allowed to work*** for the Company ***during their vacations*** for the purpose of receiving extra pay.

CP 524 (emphasis added). The provision does not preclude employees from using vacation for illness or family care. CP 7, 17 (Finding of Fact 5.2, 5.4)

Whether Phillips 66 properly administrates its CBA is not a question properly before this Court; it would instead be subject to the parties' normal process for resolving contract disputes.[4] Amici lack personal knowledge of the CBA and thus are not well situated to what the parties bargained for or why. *See, e.g., United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581-82 80 S. Ct. 1347 (1960) (the parties' agreement "is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and

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[4] If the Court determined it necessary to interpret the CBA, or determine whether a CBA violation has occurred, in order to resolve the underlying Protected Leave Complaints (which it need not), the instant matter would be preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. *See, e.g., Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 863 93 p.3d 108 (2004) ("section 301 preemption occurs where the state claim 'is inextricably intertwined with consideration of the terms of the labor contract,' and application of state law 'requires the interpretation of a collective-bargaining agreement.'), *quoting Allis–Chalmers Corp. v. Lueck*, 471 U.S. 202, 213, 105 S.Ct. 1904 (1985).

the shop—is equally a part of the collective bargaining agreement although not expressed in it."). There is no evidence in the record to suggest that Phillips 66 breached, or has been accused by Appellants' union of breaching, its contractual obligations regarding employee use of vacation time. Rather, Appellants did not challenge the Director's determination that Phillips 66 allows employees to use vacation for illness and family care – a determination that is consistent with their own sworn testimony. App. Br. 2-3; CP 735-45 (Honeycutt Dep., 22:11-13), 748-64 (Westergreen Dep., 25:13-16); Amici Br. 15.

Likewise, Amici contend that Phillips 66 administers the short-term disability benefit in the same manner as sick leave. Amici Br. 13. But the Phillips 66 Disability Plan's short term disability benefit, which offers up to 52 weeks of compensation benefits per year, is not sick leave – a fact which is uncontested. CP 7, 17 (Finding of Fact 5.3), 553-54; App. Br. 2. Rather it is a component of an integrated employee welfare plan that is covered by ERISA and partially funded by an insurance contract, which provide independent bases for its exclusion from WFCA. RCW 49.12.265(5).

III. CONCLUSION

Phillips 66 respectfully requests that the Court affirm.

DATED this 1st day of July, 2016.

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CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, certifies that on July 1, 2016, she caused to be served **Phillips 66 Company's Answer to Amici Curiae** in the below-described manner:

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