**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**September 2011 Term**

**FILED**

**September 29, 2011**

**released at 3:00 p.m.**
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**No. 101476**

**KIM WOLFE, in his capacity as CABELL COUNTY SHERIFF; CABELL COUNTY SHERIFF'S OFFICE; CABELL COUNTY COMMISSION; and the CABELL COUNTY CIVIL SERVICE COMMISSION, Defendants Below, Petitioners**

**v.**

**NATHANIEL ADKINS; JERRI ALLRED; TIM BLEVINS; JOHNNY R. BOWMAN; JOHN BOWMAN, II; DIANNE BRUBAKER; DARRELL CHAPMAN; JOHN COBURN; KENNETH GLOVER; WAYNE JARRELL; RUTH JONES; GARY LAMBERT; RONNIE MILLER; BONNIE MYERS; STEVEN RAPPOLD; JERRY RYDER; JEREMY SKIDMORE; KAREN SPENCE; GREGG STILTNER; JAMES VAUGHT; ELGIN WARD; and KEVIN WHITE, Plaintiffs Below, Respondents**

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**Appeal from the Circuit Court of Cabell County**
**The Honorable F. Jane Hustead, Judge**
**Civil Action No. 04-C-1123**

**REVERSED AND REMANDED**

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**Submitted: September 20, 2011**
**Filed: September 29, 2011**

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**JUSTICE KETCHUM delivered the Opinion of the Court.**

**JUSTICE DAVIS concurs, in part, and dissents, in part, and reserves the right to file a concurring and dissenting opinion**.

## SYLLABUS BY THE COURT

Where there is no provision in a written employment agreement, personnel handbook, personnel policy materials or employer documents granting employees payment for unused, accumulated sick leave upon termination from employment, the unused, accumulated sick leave, upon termination from employment, is not a vested, nonforfeitable fringe benefit under the West Virginia Wage Payment and Collection Act and is not payable to the employees.

**Ketchum, Justice**:

This wage payment and collection action is before this Court upon the appeal of Kim Wolfe, in his capacity as Cabell County Sheriff; the Cabell County Sheriff's Office; the Cabell County Commission; and the Cabell County Civil Service Commission (defendants below, collectively referred to as the "County") from the Circuit Court of Cabell County's order of June 24, 2010. In the order, the motion of the County for a new trial was denied, and judgment was entered in favor of Nathaniel Adkins, *et al.*, former correctional officers and other former employees of the Cabell County Jail (plaintiffs below, the "jail employees"), in the amount of $406,932.26, representing unpaid, accumulated sick leave, liquidated damages, prejudgment interest, costs and attorney fees.

The jail employees' positions were terminated in December 2003 when the Cabell County Jail closed, and its prisoners were transferred to the new Western Regional Jail under the direction of the Regional Jail Authority. Although many jail employees obtained employment at the new facility, the Regional Jail Authority refused to recognize their accumulated sick leave at the County Jail. The County contends that it should have been granted judgment as a matter of law based on the following written provision of its sick leave policy: "When the services of an employee have been terminated, all sick leave credited shall be cancelled as of the last working day with the department."

For the reasons stated below, this Court is of the opinion that the jail employees' accumulated sick leave as of the date they were terminated with the County did not constitute unpaid wages to

which they were entitled within the meaning of the West Virginia Wage Payment and Collection Act, *W.Va. Code*, 21-5-1 [1987], *et seq*. The order of June 24, 2010, is, therefore, reversed, and this action is remanded to the circuit court with directions to enter judgment as a matter of law in favor of the County.

## I.
## Factual Background

Nathaniel Adkins and the 21 other plaintiffs were employed as correctional officers or in related work at the Cabell County Jail. Along with other employees, they were given three documents, two of which addressed sick leave but none of which mentioned sick leave in the context of termination from employment.

Specifically, the jail employees were given a document entitled Cabell County Jail Policy and Procedure Manual for Correctional Officers. The record does not reflect that the Manual included any provisions concerning sick leave. However, also distributed to the jail employees was Jail Division General Order 11-2001. General Order 11-2001, effective May 17, 2001, stated as follows with regard to sick leave:

> Uniformed members shall be allowed to accumulate eighteen (18) days paid sick leave during each calendar year at the rate of one and one-half ( 1 ½) days per month. Members are allowed to accumulate from year to year unlimited days of unused sick leave. Each employee must work one (1) hour over and above one-half (½) of the prescribed working hours per month in order to be granted the one and one-half (1 ½) days per month paid sick leave.

As indicated, neither the Jail Policy and Procedure Manual nor General Order 11-2001 addressed the payment of accumulated or accrued sick leave upon termination from employment.

In addition to those two documents, a memorandum dated February 15, 2002, entitled Memo Log File #2002-005 was distributed to the jail employees. The memorandum, from Cabell County Jail Correctional Administrator James D. Johnson, stated:

> Sick leave policy is guided by WV State Code 7-14B-19C, which states Correctional Officers may accumulate sick leave in accordance with policy established by the County Commission
>
> Attached is the County Commission's sick leave policy which shall be adhered to, as the state law commands.

Included with Memo Log File #2002-005 was a copy of *W.Va Code*, 7-14B-19 [1983], section (c) of which states: "Correctional officers may accumulate yearly sick leave in accordance with policy to be established by the county commission." In addition, as brought out at trial, only one page of the Cabell County Employee Personnel Handbook was included with Memo Log File #2002-005. The Handbook was a separate document from both the Jail Policy and Procedure Manual and General Order 11-2001. The attached page of the Handbook concerned sick leave and provided in relevant part:

> Sick leave eligibility is granted each year *to be used for bona fide personal illness absences* during that year or as hereinafter set forth for maternity. Employees accrue sick leave at the rate of one and one-half days per month. The carryover of the sick leave time for bona fide personal illness absences is limited to 30 days; provided, however, for retirement purposes there is unlimited carryover of sick leave time. (emphasis added)

Neither Memo Log File #2002-005 dated February 15, 2002, nor the attachments thereto addressed the payment of accumulated or accrued sick leave upon an employee's termination from employment.

However, the succeeding page of the Cabell County Employee Personnel Handbook, not attached to Memo Log File #2002-005, nor otherwise distributed to the jail employees, stated:

> When the services of an employee have been terminated, all sick leave credited shall be cancelled as of the last working day with the department. However, accumulated sick leave may be reinstated if a permanent employee is rehired by the Employer within a period of six (6) months from the date of separation.

In December 2003, the jail employees' positions were eliminated upon the closing of the Cabell County Jail. As stipulated by the parties, their last regular payday was no later than December 15, 2003. Although many jail employees obtained employment at the Western Regional Jail, the sick leave they had accumulated with the County was not recognized by their new employer.

As a condition of receiving their final paychecks, the County required the jail employees to sign Compensation Affidavits mandated by *W.Va. Code*, 7-7-10 [1972]. Pursuant to that statute, county employees terminated from their employment must sign an affidavit acknowledging receipt of full compensation. Thus, the Compensation Affidavit each jail employee signed stated that "full compensation" was received for services rendered.[1] Nevertheless, in some instances, the jail

[1] In 2004, *W.Va. Code*, 7-7-10 [1972], was repealed by the West Virginia Legislature. *See*, *W.Va. Code*, 21-5-10 [1975] (Acceptance by an employee of partial payment of wages shall not constitute a release as to the balance of his or her claim.).

employees wrote on their Affidavits that additional monies were due for unpaid overtime, vacation or holiday pay. Unpaid, accumulated sick leave, however, was not mentioned.[2]

## II.
## Procedural Background

On December 10, 2004, the jail employees filed a complaint in the Circuit Court of Cabell County against the Sheriff, *et al*., under the West Virginia Wage Payment and Collection Act, *W.Va. Code*, 21-5-1 [1987], *et seq*.[3] Seeking payment of the accumulated sick leave, the complaint alleged the number of unpaid, accumulated sick days and the rate of pay for each jail employee. The complaint also alleged that the jail employees were entitled to liquidated damages, prejudgment interest, attorney fees and costs.

As the action proceeded in due course, the parties filed motions and renewed motions for summary judgment. The County emphasized the policy in its Employee Personnel Handbook

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[2] It should be noted that the jail employees consulted an attorney prior to the receipt of their final paychecks and the signing of the Compensation Affidavits. By letter dated December 5, 2003, the jail employees' attorney requested a hearing before the Cabell County Correctional Officer Civil Service Commission. The attorney stated: "The issue on which we request a hearing is the payment of accrued sick leave benefits to Cabell County Jail employees upon their termination of employment at the Cabell County Jail in mid-December." By response dated December 8, 2003, the President of the Civil Service Commission stated that the issue raised was not a civil service matter and, more appropriately, could be pursued in an action filed under the Wage Payment and Collection Act.

[3] In syllabus point 3 of *Beichler v. West Virginia University at Parkersburg*, 226 W.Va. 321, 700 S.E.2d 532 (2010), this Court held: "Pursuant to *W.Va. Code*, 21-5-12(a) (1975), a person whose wages have not been paid in accord with the West Virginia Wage Payment and Collection Act may initiate a claim for the unpaid wages either through the administrative remedies provided under the Act or by filing a complaint for the unpaid wages directly in circuit court."

cancelling accumulated sick leave upon termination of employment and the Compensation Affidavits showing that the jail employees had been fully paid upon the elimination of their positions. The jail employees, on the other hand, emphasized that they were not given and had no knowledge of the sick leave cancellation policy and that they felt pressure under their respective economic conditions, and the upcoming December 2003 holiday season, to sign the Compensation Affidavits in order to receive their last paycheck. All motions for summary judgment were denied by the circuit court.

The trial began on March 8, 2010, and the issues were bifurcated, with the jury to determine liability and the circuit court to determine damages. On March 9, 2010, the first phase of the trial concluded, and the jury returned the following verdict:

> 1. Did the Defendant employers have a policy, either written or unwritten, applicable to the Plaintiff employees regarding what happened to sick leave benefits upon the termination of their employment? Yes
>
> 2. Did the Plaintiff employees know of any such policy, either written or unwritten, regarding what happened to sick leave benefits upon the termination of their employment? No

Following post-verdict hearings conducted on April 2 and May 13, 2010, the circuit court entered the final order of June 24, 2010. Noting that the County's motions for judgment as a matter of law were denied twice during the trial, the order denied the County's subsequent motion for a new trial and entered judgment for the jail employees in the amount of $406,932.26 which consisted, in

the aggregate, of $303,654.90 for unpaid, accumulated sick leave, liquidated damages and prejudgment interest, plus $103,277.36 for attorney fees and costs.[4]

Thereafter, the circuit court stayed the final order of June 24, 2010, and the County filed a petition for appeal.

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[4] For unpaid, accumulated sick leave, the jail employees were awarded their regular rate of pay times the number of accumulated sick leave days, even if in excess of 30 days. As a point of comparison, the Cabell County Employee Personnel Handbook, quoted above, stated: "The carryover of the sick leave time for bona fide personal illness absences is limited to 30 days; provided, however, for retirement purposes there is unlimited carryover of sick leave time." Although the County objected to any award of accumulated sick leave in excess of 30 days, the Circuit Court concluded that the objection, made for the first time during post-trial proceedings, was untimely.

The award of liquidated damages was statutory and based on the jail employees' regular rate of pay times 30 days. As *W.Va. Code*, 21-5-4(e) [1975], provides, in part:

> If a person, firm or corporation fails to pay an employee wages as required under this section, such person, firm or corporation shall, in addition to the amount due, be liable to the employee for liquidated damages in the amount of wages at his regular rate for each day the employer is in default, until he is paid in full, without rendering any service therefor: Provided, however, That he shall cease to draw such wages thirty days after such default.

In 2006, the West Virginia Legislature amended the statute to provide for treble damages. As *W.Va. Code*, 21-5-4(e), currently provides in part: "If a person, firm or corporation fails to pay an employee wages as required under this section, such person, firm or corporation shall, in addition to the amount which was unpaid when due, be liable to the employee for three times that unpaid amount as liquidated damages."

Finally, the jail employees were awarded $98,225.00 for attorney fees and $5,052.36 for costs, totalling $103,277.36. *See*, *W.Va. Code*, 21-5-12(b) [1975], and syl. pt. 3, *Farley v. Zapata Coal Corporation*, 167 W.Va. 630, 281 S.E.2d 238 (1981) (indicating that attorney fees may be awarded but are not mandatory). As *W.Va. Code*, 21-5-12(b) [1975], states in part: "The court in any action brought under this article may, in the event that any judgment is awarded to the plaintiff or plaintiffs, assess costs of the action, including reasonable attorney fees against the defendant."

## III.
## Standards of Review

Pursuant to Rule 50(b) of the *West Virginia Rules of Civil Procedure*, "[i]f, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." In this action, all matters were finalized and resolved against the County in the final order of June 24, 2010. Upon appeal to this Court, the primary assignment of error raised by the County is a legal one: whether, based on the terms of employment between the County and the jail employees, the circuit court committed error in not entering judgment in favor of the County as a matter of law.

In that regard, syllabus point 1 of *Chrystal R. M. v. Charlie A. L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995), holds: "Where the issue on appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 4, *Harrison County Commission v. Harrison County Assessor*, 222 W.Va. 25, 658 S.E.2d 555 (2008); syl. pt. 1, *T & R Trucking v. Maynard*, 221 W.Va. 447, 655 S.E.2d 193 (2007). As to the County's motion for a new trial, authorized under Rule 59 of the *West Virginia Rules of Civil Procedure*, the standard of review, likewise, includes a *de novo* component, i.e., the inquiry on appeal concerns whether the ruling of the circuit court constituted an abuse of discretion, subject to a clearly erroneous standard as to findings of fact and a *de novo* standard as to conclusions of law. *Jones v. Setser*, 224 W.Va. 483, 488, 686 S.E.2d 623, 628 (2009); *Peters v. Rivers Edge Mining, Inc.*, 224 W.Va. 160, 172-73, 680 S.E.2d 791, 803-04 (2009).

## IV.
## Discussion

Under the definitions set forth in *W.Va. Code*, 21-5-1 [1987], of the West Virginia Wage Payment and Collection Act, the term "wages" includes accrued fringe benefits. That section, in turn, defines the phrase "fringe benefits" as including sick leave. Specifically, *W.Va. Code*, 21-5-1(c) [1987], states, in part: "[T]he term 'wages' shall also include then accrued fringe benefits capable of 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." *Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203, 530 S.E.2d 676 (1999). Whether a particular fringe benefit is payable to an employee is determined by the terms of employment and not by the provisions of *W.Va. Code*, 21-5-1( c). *Meadows*, *supra*, 207 W.Va. at 216, 530 S.E.2d at 689. The "terms of employment" not only include a written employment agreement but also includes the employer's personnel handbook or manual, personnel policy materials, memoranda and documents intended to be used by employers in establishing the benefits of their employees. *See, Younker v. Eastern Associated Coal Corp*., 214 W.Va. 696, 591 S.E.2d 254 (2003).

The County, asserting that it should have been granted judgment as a matter of law, emphasizes that no representations of any kind were ever made to the jail employees that they would receive monetary compensation for accumulated sick leave upon termination from employment. In fact, in the history of the County no employee had ever been so compensated. The County argues in its petition for appeal:

> Where there is no term of employment, however, as in the instant case, providing for the payment of accumulated sick leave upon an employee's separation of employment, the employee is simply not entitled to such payment. Rather, only where the employer has a written or unwritten policy *providing* such fringe benefits, is the employer obligated to pay the employee upon separation from employment. (emphasis added)

Moreover, according to the County, the jail employees were on constructive notice of, or could have obtained knowledge of, the exact opposite policy as set forth in the Cabell County Employee Personnel Handbook. The Handbook stated: "When the services of an employee have been terminated, all sick leave credited shall be cancelled as of the last working day with the department."

The jail employees, however, contend that the Cabell County Employee Personnel Handbook containing the cancellation policy is irrelevant because, as the jury determined, the jail employees had no knowledge of any policy regarding what happened to unpaid, accumulated sick leave upon termination. The Handbook was never distributed to the employees. Nor was the question of sick leave upon termination addressed in the Jail Policy and Procedure Manual, Jail Division General Order 11-2001 or in Memo Log File #2002-005, all of which were given to the jail employees. Consequently, relying on *Meadows v. Wal-Mart Stores, Inc.*, *supra*, the jail employees assert that in the absence of a controlling provision *excluding* the payment of accumulated sick leave as a fringe benefit upon termination of employment, and in the absence of communication to the employee of the provision, the employer is obligated under the Wage Payment and Collection Act to pay the benefit.

In *Meadows*, five consolidated wage payment actions were before this Court, three of which involved employee challenges to the nonpayment of unused, accumulated sick leave upon termination or separation from employment. Noting that "the specific provisions concerning fringe benefits of the applicable employment policy" determined whether the unused benefits in question were included in the term "wages" under the Act, this Court affirmed summary judgments for the employer in two of the sick leave actions because, in each instance, the written employment agreement plainly stated that unused, accumulated sick leave would not be paid on separation from employment. Nothing in *Meadows* indicated that the employees had not received, or were unaware, of the provisions concerning sick leave.

The third action in *Meadows*, however, involved a written employment agreement which provided for the payment of unused, accumulated sick leave for illness, disability and retirement but was silent concerning whether such leave would be paid upon termination or separation from employment. *Meadows* confirmed the principle that "the terms of the applicable employment policy, and not the WPCA, determine whether fringe benefits are included in the term 'wages' under W.Va. Code § 21-5-1( c)." 207 W.Va. at 216, 530 S.E.2d at 689. In addition, *Meadows* stated, in the negative, that nothing in the Wage Payment and Collection Act would prevent an employer from providing that unused fringe benefits would not be paid to employees upon separation from employment. 207 W.Va. at 216, 530 S.E.2d at 689. The Court, relying on the negative inference, held that the employer was required to inform the employee what he would <u>not</u> receive as a term of employment. In affirming judgment in favor of the employee, the opinion noted: "The terms of employment in the instant case do not expressly state that employees who are separated from

employment will not receive cumulative sick days not taken during the course of employment." 207 W.Va. at 222-23, 530 S.E.2d at 695-96. Thus, syllabus point 5 of *Meadows* held:

> Pursuant to W.Va. Code § 21-5-1( c) (1987), whether fringe benefits have then accrued, are capable of calculation and payable directly to an employee so as to be included in the term "wages" are determined by the terms of employment and not by the provisions of W.Va. Code § 21-5-1( c). Further, the terms of employment may condition the vesting of a fringe benefit right on eligibility requirements in addition to the performance of services, and these terms may provide that unused fringe benefits will not be paid to employees upon separation from employment.

Justice Davis filed a concurring opinion in *Meadows* expressing the view that the West Virginia Legislature did not intend the Wage Payment and Collection Act to impose upon employers the financial burden of the payment of "nonvested fringe benefits." 207 W.Va. at 227, 530 S.E.2d at 700.

Subsequently, in *Ingram v. City of Princeton*, 208 W.Va. 352, 540 S.E.2d 569 (2000), the City of Princeton appealed from a judgment following a jury trial awarding a former police officer unused, accrued sick leave, liquidated damages, costs and attorney fees. The officer, who had resigned from his employment, filed the action under the Wage Payment and Collection Act and alleged that the City failed to pay him for 99 days of unused, accrued sick leave. The City argued that to be entitled to the unused sick leave, "there had to be an express agreement between the parties that such payment would be made upon separation." 208 W.Va. at 357, 540 S.E.2d at 574. Upon review, this Court concluded that, because the officer knew that the City had an unwritten policy of not paying for unused sick leave when police officers left their employment, the City's motion for judgment as a matter of law should have been granted. The opinion in *Ingram* states:

> [T]he facts developed during the trial indicated that the City had an unwritten policy of *never paying* unused sick leave to separated police officers. Thus, no ambiguity was shown to [exist] regarding the existence and terms of the unwritten policy. In fact, Mr. Ingram acknowledged during the trial that he was fully aware of the unwritten policy. There was no evidence of *any* police officer ever having been paid unused sick leave upon his/her separation of employment with the City.

208 W.Va. at 357, 540 S.E.2d at 574 (emphasis in the original)

Soon after *Ingram*, this Court again considered unused, accrued sick leave in *Howell v. City of Princeton*, 210 W.Va. 735, 559 S.E.2d 424 (2001). The circumstances in *Howell* also involved the City of Princeton and its unwritten policy of not paying for unused sick leave upon separation from employment. Thus, in *Howell*, consolidated actions seeking unused sick leave under the Wage Payment and Collection Act, filed by City employees who had separated from their employment, were dismissed on the City's motion pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*. Upon appeal, however, this Court reversed and remanded the actions for further proceedings. Noting that the record was unclear concerning whether the employees knew about the unwritten policy, this Court concluded:

> Under *Meadows* and *Ingram* this unwritten policy would be sufficient to defeat the claim asserted by the Officers, *if* the record clearly illustrated that the Officers were aware of the policy. Insofar as the Officers' claims were disposed of at the pleading stage, there is nothing in the record to show that the Officers were aware of the policy. Without such an affirmative showing, the complaints filed by the Officers stated a cause of action upon which relief may be granted. Therefore, it was error for the trial court to dismiss the complaints at the pleading stage.

210 W.Va. at 738, 559 S.E.2d at 427. (emphasis in the original) *See also*, *Gress v. Petersburg Foods, LLC*, 215 W.Va. 32, 592 S.E.2d 811 (2003), in which this Court directed that judgment be entered for the employer where the employee, seeking compensation for unused, accumulated vacation time, was aware of the employer's unwritten but consistently applied policy limiting the amount payable for unused vacation time upon separation from employment.

In this action, even without considering the written policy of cancelling accumulated sick leave upon termination, the evidence demonstrates that the jail employees were aware that sick leave could only be used for "bona fide personal illness absences," subject to other provisions in the case of maternity or retirement. That was plainly stated in the attachment to Memo Log File #2002-005 given to the jail employees. The evidence also demonstrates that no representations of any kind were ever made to the jail employees that they would receive compensation for accumulated sick leave upon termination from employment. During the trial, the testimony revealed that no employee, including jail employees, had ever been paid sick leave benefits upon termination. Thus, although the terms of employment between the County and the jail employees consisted of various documents and memoranda, nothing in the terms of employment provided the benefit the jail employees now seek.

This Court is of the opinion that the absence of the accumulated sick leave benefit in question does not render the terms of employment between the County and the jail employees ambiguous. As stated in *Meadows*, entitlement to that benefit is to be determined by the specifics of the terms of employment rather than by the Wage Payment and Collection Act. Problematic, however, is the

language in *Meadows* imposing a burden upon employers to negate a fringe benefit never conferred in the first instance, i.e., the employer must tell the employees what they will not receive as fringe benefits. That language is found in *Meadows* in the body of the opinion where it is stated that "the terms of employment in the instant case *do not* expressly state that employees who are separated from employment will *not receive* cumulative sick days not taken during the course of employment" (emphasis added).

In this action, similarly problematic is the following instruction given to the jury: "If you find that the employer *did not have* a controlling policy regarding the payment or nonpayment of sick leave benefits upon separation from employment, *then you must find in favor of the employees*." (emphasis added) This Court concludes that that instruction, binding in nature, and the comparable language quoted above from *Meadows*, are erroneous as incompatible with fundamental contract law. Specifically, the language in *Meadows*, suggesting that terminated employees are entitled to accumulated sick leave where the terms of employment do not "expressly state" that they will not receive it, constitutes mere *obiter dicta* and is not controlling or persuasive in these circumstances. Consequently, we find merit in the following assertion of the County: "[A]ny entitlement must arise from the employment itself. Indeed, there must be an 'express agreement' between employer and employee that the employee is entitled to payment of a fringe benefit upon separation from employment."

Consequently, this Court holds that where there is no provision in a written employment agreement, personnel handbook, personnel policy materials or employer documents granting

employees payment for unused, accumulated sick leave upon termination from employment, the unused, accumulated sick leave, upon termination from employment, is not a vested, nonforfeitable fringe benefit under the West Virginia Wage Payment and Collection Act and is not payable to the employees.

No representations of any kind were ever made to the jail employees that they would receive compensation for accumulated sick leave upon termination from employment. It was never part of the terms of employment. Whether unpaid, accumulated sick leave is payable to an employee upon termination is determined by the terms of employment and not by the provisions of *W.Va. Code*, 21-5-1 [1987]. There were no representations, policies, memoranda or other documents granting the jail employees pay for accumulated sick leave upon termination from employment.

## V.
## Conclusion

This Court is of the opinion that the jail employees' accumulated sick leave as of the date they were terminated from employment with the County was not payable to them as wages within the meaning of the West Virginia Wage Payment and Collection Act, *W.Va. Code*, 21-5-1 [1987], *et seq*. The order of June 24, 2010, is, therefore, reversed, and this action is remanded to the circuit court with directions to enter judgment as a matter of law in favor of the County.[5]

Reversed and Remanded.

[5] In view of the result in this appeal, it is not necessary to address the County's additional assignments of error.