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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF DICKINSON

CLEMENT SOLGAT

Plaintiff,

v

ORDER DENYING MOTION FOR REHEARING
FILE NO. D94-8517-AE

ACCURATE MECHANICAL,
MICHIGAN EMPLOYMENT
SECURITY COMMISSION

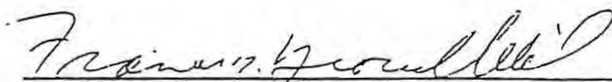
Defendant.

_______________________________/

This Court having entered its Opinion and Order in this cause on February 15, 1995, and defendant having filed a Motion for Rehearing on March 6, 1995, and the Court having reviewed that motion and the accompanying brief;

IT IS ORDERED under the provisions of MCR 2.119(F) that the Motion for Rehearing be and hereby is denied for the following reasons: (1) It was not timely filed; (2) the motion merely presents the same issues already ruled on by the Court.

DATED: June 29, 1995



FRANCIS D. BROUILLETTE
41ST CIRCUIT JUDGE

cc: Atty. David Celello
Atty. Mark Davidson
Accurate Mechanical

FDB:mmb

JUL - 3 1995

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF DICKINSON

CLEMENT SOLGAT,

Plaintiff-Appellant (Claimant) <u>OPINION AND ORDER</u>
SSN: [redacted] File: D94-8517-AE

v

ACCURATE MECHANICAL,

Defendant-Appellee (Employer)

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellee

Clement Solgat worked for Accurate Mechanical from August 27, 1990 through November 9,1990. On that date he was laid-off for lack of work. He applied for unemployment benefits on November 13,1990 and was denied. That denial has continued through the appellate process as established by statute to the point where the Application for Rehearing was denied by the Board of Review and an appeal to this Court followed.

Counsel in their briefs discuss the standard of review in this appeal. That standard is established by constitution and statute. MCLA 421.38 provides:

> " (1) The circuit court for the county in which the claimant resides or in the circuit court for the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court of the county in which the employer's principal place of business in the state is located, may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect thereto as justice may require, but the court may reverse any order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record ..."

The issue in this case doe not involve a factual dispute. The issue is whether or not the decisions in this case to date are contrary to law.

The relevant facts are as stated above and that Mr. Solgat worked as a union journeyman pipefitter. Mr. Solgat belonged to a local which, together with five other locals in Michigan's upper peninsula, negotiated labor contracts. The negotiations decided on an amount of money the pipefitters would receive.

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After that amount was agreed in negotiations the union members voted to determine the fashion in which they would receive that negotiated hourly rate. They would allocate portions of that amount to wages, to health insurance, to apprentice training and to retirement. That determination by the union was then communicated to the employers. The employers then sent the amount the union decided was to be applied to fringes to the Upper Peninsula Plumbers and Pipefitters Fringe Benefit Fund. The balance was paid to the employee in the form of wages.

Those seem to be the relevant facts and there is no dispute as to those facts. It is the application of the law to those facts which is in question.

MCLA 421.27 (f) provides that where a person otherwise eligible for unemployment benefits is receiving retirement benefits the amount of the retirement benefit will reduce the unemployment benefit to which the laid-off employee would otherwise be entitled and sets up a formula to determine when a retirement benefit will be considered a retirement benefit as it pertains to eligibility for unemployment benefits. It will be treated as a retirement benefit for unemployment purposes according to a formula set forth in MCLA 421.27 (f) (4) (b):

> "If a benefit such as described in subparagraph (a) is payable or paid to the individual under a plan to which the individual has contributed:
> (i) less than half of the cost of the benefit, then only half of the benefit shall be treated as a retirement benefit.
> (ii) half or more of the cost of the benefit, then none of the benefit shall be treated as a retirement benefit."

The issue then is not one of fact. the facts are not in dispute. The issue is a legal one. This Court must decide if the decisions in this case to date are "contrary to law" as provided in MCLA 421.38.

The statute in question is not ambiguous. In Polites v Flint Public Schools, 132 MA 690 (1984) the Court so found:

> "A statute which is unambiguous on its face must be applied as written and is not open to further interpretation or construction of its terms. We see no ambiguity in the statute."

Nor is the policy which underlies the Michigan Employment Security Act a mystery. It is set forth specifically at MCLA 421.2. The Michigan Supreme Court stated the purpose of the Act

even more succintly in Renown Stove Company v Unemployment Compensation Commission, 328 Mich 436 (1950):

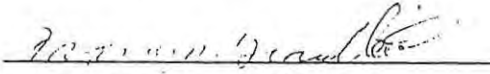
> "In brief, the objective sought to be gained is protection against the evils incident to involuntary unemployment and the fostering of social and economical security by the payment of benefits to individuals who have suffered a loss of pay resulting from voluntary unemployment."

In this case the funds in the hands of the employer in total belonged to the employee. They had been negotiated as a lump sum. It was the decision of the employee through his bargaining agent which decided the ultimate distribution of those funds. The employer had no voice in the decision. The employees, through their representative, could have received all or any part of those funds as wages and, presumably, could have earmarked whatever amounts they chose to various fringe benefits. I cannot conclude that any of the funds sent by the employer to the fringe benefit fund were his, or were a contribution by the employer under these facts. It was the employees money in total and the employer merely disbursed it as directed once it had been earned by the performance of labor. The plan was that of the employee and the contribution to the plan, in total, was that of the employee.

Appellee argues that no taxes were deducted from the funds sent by the employer to the fringe benefit fund and it appears that that is an accurate statement. This Court does not, however, conclude from that fact that somehow the funds become an employers contribution. Many plans do not require a withholding of taxes from an employees contribution to a retirement fund and no conclusion helpful to Appellee can be drawn from that fact. Under the undisputed facts of this case the earned funds of the employee in the hands of employer belonged in total to the employee. The employee alone, through his bargaining agent, decided the distribution of those funds. As a matter of law all of the funds submitted by the employer to the fringe benefit fund for the employees retirement must be considered, under the statute, a contribution of the individual employee.

This Court is satisfied that the decision below is contrary to law and it is reversed. This case is remanded for further proceedings consistent with this Opinion and Order.

No further Order need be prepared as this Opinion and Order will serve as the final Order of this Court.

DATED: February 15, 1995 

FRANCIS D. BROUILLETTE

41st Circuit Court Judge

cc: Atty. David Celello
Assistant Atty. General Mark F. Davidson
Michigan Employment Security Board of Review
Accurate Mechanical

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