107488

A. D. No. B87-16460-107488
S. S. No. [redacted]
B. O. No. 56

STATE OF MICHIGAN

IN THE COURT OF APPEALS

LANSING SCHOOL DISTRICT,
Employer-Appellee,

No. 118334

v

UNPUBLISHED

DAN F. BEARD,
Claimant-Appellant,

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellee.
_____/

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Employment Security Commission
_____/

O P I N I O N

2-58 27(i) 2/91

STATE OF MICHIGAN

COURT OF APPEALS

LANSING SCHOOL DISTRICT,

Plaintiff-Appellee,

v

DAN F. BEARD,

Defendant-Appellant,

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellee.

NOV 2 9 1990

No. 118334

Before: Cavanagh, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order reversing the decision of the Michigan Employment Security Commission (MESC) which determined that defendant was eligible for unemployment benefits. We hold that the MESC decision was not contrary to law or unsupported by competent, material and substantial evidence on the whole record and reverse the circuit court.

The issue presented in the present case is whether the MESC, in determining if plaintiff was entitled to unemployment benefits for the summer recess period under MCL 421.27(i)(1); MSA 17.529(i)(1), erred in concluding that plaintiff had not received reasonable assurance of continued employment. Section 27(i)(1) provides that unemployment benefits for a summer recess period between two academic years will be denied to teachers who perform services in an instructional, research, or principal administrative capacity in the first academic year if there exists a contract or reasonable assurance that the individual will perform any of these services in the second academic year. MCL 421.27(i)(1); MSA 17.529(i)(1); Paynes v Detroit Board of Ed,

150 Mich App 358, 367; 388 NW2d 358 (1986). Although the term "reasonable assurance" does not require a formal written or oral agreement to rehire, Riekse v Grand Rapids Public Schools, 144 Mich App 790, 792; 376 NW2d 194 (1985), Section 27(i)(1), explicitly states that the assurance must be reasonable. To determine whether the assurance was reasonable, the MESC must necessarily consider the information upon which it was based. The MESC is not required to accept on blind faith any assurance given by a school district to one of its employees. Grand Rapids Public Schools v Falkenstern, 168 Mich App 529, 538; 425 NW2d 128 (1988), lv den 431 Mich 911 (1988).

An appellate court's sole function with regard to the MESC's findings is to determine whether they are contrary to law or unsupported by competent, material, and substantial evidence. Falkenstern, supra, at 539. The question of whether the school district provided defendant with a reasonable assurance of employment in the forthcoming academic year, such that he would not qualify for unemployment compensation benefits, is a factual question for the MESC to determine. Riekse, supra, at 792.

In the present case, defendant was hired as a vocational data processing teacher at Hill Vocational Educational School. During his six years of teaching vocational education, defendant was subject to annual authorization because he was not certified as a vocational education teacher. On May 5, 1987, defendant received a letter requesting that he make plans for obtaining his temporary or permanent vocational education certification. In this letter, defendant was informed that all jobs held by teachers who were not vocationally certified by July 1, 1987, would be posted at other institutions and an advertisement placed in the Lansing State Journal. On approximately May 22, 1987, defendant received a memorandum stating that unless specifically notified to the contrary, defendant had a reasonable assurance for employment for the

following school year. Defendant was not certified as a vocational education teacher, however, defendant was certified as a social studies and english teacher. The hearing referee's decision, which was later adopted by the MESC, held that while defendant received a memorandum of assurance of future employment, the memorandum was not a reasonable assurance of employment because it had a qualification that the complainant might be specifically notified to the contrary. On the basis of the May 5, 1987 letter, the referee found that defendant had been notified to the contrary sufficient to remove any reasonable assurance of employment. The referee also noted that complainant testified that jobs for certified social studies teachers were not in abundance and that they were difficult to obtain. On appeal, the circuit court found that the memorandum of May 22, 1987 constituted adequate assurance as a matter of law and that the referee's opinion ignored unrefuted evidence that positions were available to claimant even if his vocational education position had been posted and filled.

We disagree with the circuit court's conclusion that the issue of whether the memorandum of May 22, 1987 constituted adequate assurance was a matter of law. We hold that the referee's decision was not contrary to law and that the issue of the reasonableness of the assurance is a question left to the MESC. Likewise, the ambiguity contained in the May 22, 1987 memorandum and the existence of the May 5, 1987 memorandum constituted competent and material evidence to support the MESC's opinion that defendant had not received adequate assurance of continued employment sufficient to bar a claim for unemployment benefits.

We reverse the circuit court's opinion and reinstate the MESC's opinion affirming the referee's decision.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen