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S.S. No. [redacted]
B.O. 23
Employer No. 0809081

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

FRANCES A. THOMPSON,
Claimant/Appellant,

File No. 96-7631-AE

v

CHIPPEWA VALLEY SCHOOL DISTRICT,
Employer/Appellee,
and,
MICHIGAN UNEMPLOYMENT SECURITY COMMISSION,
Appellee.
_____/

FRANCES A. THOMPSON
In Pro Per

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_____/

OPINION AND ORDER

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

FRANCES A. THOMPSON,

Claimant/Appellant,

vs. File No. 96-7631-AE

CHIPPEWA VALLEY SCHOOL DISTRICT,

Employer/Appellee,

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION.

_____/

OPINION AND ORDER

Claimant Frances Thompson appeals from the Michigan Employment Security Commission Board of Review's August 30, 1996 Decision denying her claim for unemployment benefits under MCL 421(i)(2); MSA 17.529(i)(2) following remand from this Court in Thompson v Chippewa Valley School District, Macomb County Circuit Court Case No. 95-3872-AE (1995).

The circumstances underlying this appeal are set forth in the Court's May 29, 1996 Opinion and Order issued in Thompson, supra. As stated therein, a school employee such as Thompson may be denied benefits under MCL 421(i)(2) if: (1) the employee is reasonably assured of re-employment in the following year, and; (2) the economic terms and conditions of employment for the upcoming year are reasonably similar to those of the preceding year. Paynes v Detroit Board of Education, 150 Mich App 358, 376; 388 NW2d 358

(1986). A June 19, 1978 MESC Manual states that a salary difference between 2 academic years shall not exceed 10%, while a November 1, 1993 Manual revision states that the difference shall not exceed 20%. Both versions require that the cash value of fringe benefits be considered in deciding whether offered economic terms and conditions are reasonably similar to those of the preceding year. In Thompson, this Court remanded to the Board:

> "(1) to consider whether the totality of economic terms and conditions of employment had been reasonably similar between the two academic years in question based on:
>
> (a) the reduction of hours;
>
> (b) the wage increase; and
>
> (c) any difference in cash value of employer paid fringe benefits; and
>
> (2) to clearly and with particularity set forth all of the mathematical calculations used in considering the above factors." Thompson Opinion and Order, May 29, 1996, at 6-7 (emphasis in original).[1]

On remand, the Board determined in a 2-1 Decision that Thompson was not eligible for unemployment benefits:

> "Since the claimant had worked 7 1/2 hours per day in the previous year she would have gone from $501.75 [13.38 x 7.5 x 5] to $465.40 [6.5 x 14.32 x 5]. The difference is 7% [465.40 501 = .9275 or 93%]. This is somewhat different than our original number. This is because we used 7 hours/day. However, upon

[1] The remand resulted from the Board's failure to consider Thompson's reduction in hours from 1992/1993 to 1993/1994 from 7 1/2 hours to 5 3/4 hours and this reduction's effect upon the value of employer-paid fringe benefits, the Board's sole reliance upon a pay increase from $13.38/hour to $14.32/hour, and an unsupported calculation of a less than 1% wage differential. See Thompson Opinion and Order, May 29, 1996, at 5-6.

> further review it appears 7.5 hours is the more appropriate number. If we use 7.5 the difference is somewhat larger but it is still not material.
>
> . . . . (W)ith respect to eligibility for fringe benefits there is no impact since all of the claimant's co-pays were calculated on the basis of an employee working between six and eight hours a day." Board Decision, August 30, 1996, at 1-2.

The Dissent reasoned that Thompson was eligible for employment benefits because: (1) the assurance of re-employment to Thompson was "illusionary" given Chippewa Valley School District's admission that a 1992/1993 millage vote had failed; (2) the proper mathematical calculation yields a 20% salary difference based upon a reduction in work hours applied against the salary increase, and; (3) Thompson's actual work hours may have been five instead of six hours. Id, at 3.

When reviewing an MESC decision, a circuit court must determine if the decision is authorized by law and supported by competent, material, and substantial evidence on the whole record. Senior Accountants, Analysts, and Appraisers Association v City of Detroit, 184 Mich App 551, 556-557; 459 NW2d 15 (1990) lv den 437 Mich 888 (1991), MCL 421.38(1); MSA 17.548(1). The reviewing court should give due deference to administrative expertise, and should not invade the province of exclusive administrative fact-finding by displacing the agency's choice between two reasonably different views. Senior Accountants, supra, at 557.

By letter dated March 26, 1997, claimant Thompson relates to the Court:

> "(T)he review board uses a figure of 6.5 hours in calculating a 7% loss, this is wrong because when I returned to work, I was only given a 5 3/4 hour run which resulted in an 18% loss in wages. Since I was under 6 hours it also affected my fringe benefits, and diminished them. It was not until 5 days later when the transportation department conceded that they had not provided enough time to handle the school runs. At that time, my hours were increased to 6 1/2 hours and my fringe benefits were returned to their present level."

Claimant testified at her MESC hearing consistent with her recent letter. Transcript, March 15, 1994, at 14. Claimant also agreed that she was given reasonable assurance of returning to employment for the 1993/1994 academic year, and that her wage rate was increased for 1993/1994 from $13.38/hour to $14.32/hour. Id, at 22, 38-39.

The Board was authorized under MCL 421(i)(2) to deny claimant Thompson unemployment benefits if she was reasonably assured of re-employment in 1993/1994, and the economic terms and conditions of her employment for 1993/1994 were reasonably similar to those of 1992/1993. Paynes, supra. There was competent, material, and substantial evidence before the Board to support its finding that this criteria was met. Consequently, the Board's August 30, 1996 Decision denying unemployment benefits to Thompson should be affirmed. Senior Accountants, supra, MCL 421.38(1).

Paynes, supra, authorized the Board to calculate the value of Thompson's economic terms and conditions of employment over the entire 1993/1994 academic year. With the exception of Thompson's first five days of work, the Board's mathematical calculations now

appear accurate. Over the entire year, a $53.70 correction to the Board's calculation of a 7% salary reduction[2] could reasonably be construed by the Board as negligible. On the whole, the record supports the Board's finding that the economic terms and conditions of Thompson's employment for 1993/1994 were reasonably similar to those of 1992/1993. Paynes, Senior Accountants, supra. The record does not compel a finding that the reasonable assurance of employment to Thompson was "illusory". Id.

The Michigan Employment Security Commission Board of Review's August 30, 1996 Decision denying claimant Frances Thompson's claim for unemployment benefits under MCL 421(i)(2) is hereby AFFIRMED. Taxable costs on appeal ONLY are hereby awarded appellee Chippewa Valley School District.

IT IS ORDERED.

HONORABLE DEBORAH A. SERVITTO

/al

DATED: August 28, 1997

cc: FRANCES A. THOMPSON
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[2] (6.5 hours - 5.75 hours) x 5 days x $14.32/hour = $53.70 lost to claimant for the first week of the 1993/1994 academic year.