A.D. No. B92-20594-R01-124781W
S.S. No. [redacted]
B.O. No. 43

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MALCOLM E. BRANNEN,

Claimant/Appellant,

Case No. 95-5003-AE

v

Hon. Paul J. Sullivan

GRAND RAPIDS PUBLIC SCHOOLS,

Employer/Appellee,

and,
MICHIGAN EMPLOYMENT
SECURITY COMMISSION

Appellee.
_____/

ELI GRIER (P14374)
Attorney for Claimant/Appellant

DAVID W. SWETS (P21028)
Attorney for Employer/Appellee

FRANK J. KELLEY, Attorney General
of the State of Michigan
By: PETER T. KOTULA (P41629)
Assistant Attorney General
Attorneys for MESC
_____/

OPINION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MALCOLM E. BRANNEN,

Claimant/Appellant,

v.

GRAND RAPIDS PUBLIC SCHOOLS,

Employer/Appellee,

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellee.

_____/

File No. 95-5003-AE

Hon. Paul J. Sullivan

OPINION

Appearances:

Eli Grier (P14374)
Attorney for Claimant/Appellant

David W. Swets (P21028)
Attorney for Employer/Appellee

Frank J. Kelley, Attorney General
by Peter T. Kotula (P41629)
Ass't Attorney General
Attorney for MESC

The facts in this case essentially are undisputed. For purposes of this Opinion, the Court adopts as its own the statement of facts contained in pages 1thru 6 of Claimant/Appellant's brief dated January 19, 1996.

Absent some legitimate constitutional challenge, this Court cannot, should not, and will not substitute its opinion for clear and unambiguous legislative enactments. See, e.g., Davis v. Board of Education of School District for City of River Rouge, 73 Mich App 358 (1987) and DeKind v. Gale Manufacturing Co., 125 Mich App 598 (1983). Similarly, this Court fully recognizes that a Michigan Employment Security Commission Board of Review decision must be affirmed unless it lacks the support of competent, material, and substantial evidence, or is contrary to law. MCL 421.38(1). See also, Carswell v. Share House, Inc., 151 Mich App 392 (1986).

School employment is unique. In order to avoid subsidizing summer vacations by teachers and certain other employees of educational entities through the payment of unemployment benefits, legislation was adopted which denies unemployment benefits for teachers between terms where there is reasonable assurance that the teacher will be performing similar duties in the upcoming term. Specifically MCL 421.27(i)(1) states as follows:

> (i) Benefits based on service in employment described in section 42(8),(9), and (10) are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of service subject to this act, except that:
>
> > (1) With respect to service performed in an instructional, research, or principal administrative capacity for an institution of higher education as defined in section 53(2), or for an educational institution other than an institution of higher education as defined in section 53(3), benefits shall not be paid to an individual based on those services for any week of unemployment beginning after December 31, 1977 that commences during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to an individual if the individual performs the service in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform service in an instructional, research, or principal administrative capacity for an institution of higher education or an educational institution other than an institution of higher education in the second of the academic years or terms, whether or not the terms are successive. [emphasis added].

In an effort to interpret this matter in the narrowest possible terms, this Court will assume that the reasonable assurance of continued service with the Grand Rapids Community College would be sufficient to trigger the school denial provision. However, this Court is also

bound by the clear and unambiguous holdings of Michigan's higher appellate courts.

In Paynes v. Detroit Board of Education, 150 Mich App 358 (1986), the Court adopted the reasoning of Leissring v. Dep't of Industry, Labor & Human Relations, 115 Wis 2d 475 (1983) and specifically held that "the economic terms and conditions of the employment in the successive year must be reasonably similar to those of the preceding year in order for the ineligibility provision to apply." Continuing,

> "Thus, we hold that, to be denied unemployment benefits pursuant to MCL 421.27(i)(1)(a) ... , the school denial period provision, (1) a teacher must be reasonably assured of reemployment the following year in an instructional, research, or principal administrative capacity, and (2) the economic terms and conditions of the employment for the following year must be reasonably similar to those in the preceding year. [emphasis added]. Paynes, supra, at 377.

The employer and the MESC have as much as conceded that with respect to the Grand Rapids Public Schools, there was as of early July 1992 no reasonable assurance of continued employment with that employer. Such being the case, the competent, material and substantial evidence on the whole record reveals that in the absence of continued employment by the Grand Rapids Public Schools, claimant/appellant's pay for his continued employment with Grand Rapids Community College would be roughly one half of his prior pay, even with the same hours and duties. Hence, the reasonably assured economic terms of his continued employment would by no stretch of the imagination be reasonably similar to those in the preceding year. See, e.g., Rogel v. Taylor School District, 152 Mich App 418 (1986) holding that affected employees should not be subject to the denial under section 27(i) due to the "economic crunch" caused by a four week delay in reopening schools for the fall term.

Even conceding the distinction between Paynes and the instant case, i.e., that Paynes involved but one employer, while the instant case involves two, the rationale of Paynes is no less valid. Accordingly, it is the considered opinion of this Court that in affirming the referee's decision that claimant was ineligible for unemployment benefits due to the school denial period provision of the Act, the Board of Review holding was clearly contrary to law as set forth in Paynes. Said decision is hereby REVERSED, and claimant is deemed NOT disqualified for unemployment benefits for the weeks July 2 through July 31, 1992.

Mr. Grier is directed to prepare and submit an appropriate ORDER consistent with this Opinion, either approved for entry by opposing counsel or pursuant to the seven day rule.

DATED: June 14, 1996

Paul J. Sullivan, Circuit Judge

ATTEST: A TRUE COPY

Deputy County Clerk