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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TIMOTHY MINICK,

Claimant-Appellant,

v

ANN ARBOR PUBLIC SCHOOLS AND MICHIGAN EMPLOYMENT SECURITY COMMISSION,

APPELLEES.

File No. 90-39906 AE

OPINION AND ORDER AFFIRMING DECISION OF MESC BOARD OF REVIEW

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At a session of said Court held in the Washtenaw County Courthouse on April 30, 1991

The matter before the Court involves an Appeal of a Michigan Employment Security Commission (MESC) decision which denied the Claimant-Appellant unemployment benefits.

The significant facts of this case are not disputed. Appellant was an employee of the Ann Arbor Public School District. He held the position of "Library Community Assistant" with principal duties consisting of enforcing rules of behavior and security at the school district operated Ann Arbor Public Library. He was scheduled to work a maximum of 191 days from the start of the school year until its end. He worked 189 days from September 2, 1988 until May 31, 1989. On May 22, 1989 he was informed that his last day of service would be May 31, 1989, and that the first day of service in the fall was yet to be determined. He returned to this employment September 1, 1989.

On June 5, 1989 Appellant filed for unemployment benefits. MESC issued a determination on June 22, 1989 denying benefits pursuant to Sec 27 (i) (4) of the Michigan Employment Security Act (The Act), MCL 427.1 et.seq. providing for the school denial period. Minick protested and MESC reaffirmed its determination on June 28, 1989. He then requested a referee hearing which was held September 28, 1989. The Referee affirmed MESC's redetermination on October 3, 1989. Minick then appealed to the Board of Review which, on September 27, 1990 affirmed the referee's decision denying

benefits. Minick has now brought his Claim of Appeal.

It is well settled that the scope of the Court's review of a decision of the Board of Review is controlled by Section 38 of The Act, (MCL 421.38) and the Constitution (Const. 1963, Act 6, Section 28).

> "The circuit court... may review questions of fact and law on the record made before the referee and the board of review involved in a final order and decision of the board, and may make further orders in respect thereto as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or it is not supported by competent material and substantial evidence on the whole record."
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> MCL 421.38 (emphasis added).

Substantial evidence has been defined as "such evidence as a reasonable mind will accept as adequate (sic) to justify conclusion." MERC v Detroit Symphony Orchestra, Inc., 393 Mich 116, (1974).

The power of the Court in reviewing an agency decision is limited. The Court determines from the record whether the decision is supported by competent, material and substantial evidence on the whole record. Hagerty v State Tenure Commission, 179 Mich App 109 (1989). (Emphasis added). While such a review does not necessarily reach the status of a de novo review, it does entail a degree of qualitative and quantitative evaluation of the evidence considered by the agency. MERC v Detroit Symphony Orchestra, supra.

It is not necessary for the Court to agree with the agency's conclusion.

> "It is the function of the appeal board to draw inferences, not ours. Our task is to simply determine whether the appeal board's inferences and findings are supported by the evidence."
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> Foster v Employment Security Commission, 15 Mich App 96 (1968).

The Court must accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. MERC v Detroit Symphony Orchestra, supra.

Appellant argues that the disqualification provisions of Section 27 (i) of The Act must be narrowly construed. The purpose of the Act is to ameliorate the effects of involuntary employment. Disqualification provisions are to be construed in favor of those involuntarily unemployed. Section 27 (i), the school denial period provision, is such a disqualification provision. Rogel v Taylor School District, 152 Mich App 418 (1986). Appellant argues the denial period has been expanded into an area not contemplated by the legislature - a public library system serving the public at large on a year-round basis.

Appellant further argues that his services were in no way linked to the academic cycle associated with the school

year. Where these services are not so linked, an award of unemployment benefits has been held to be fully warranted. In support, Appellant relies on Wilkerson v Jackson Public Schools, 170 Mich App 133 (1988); Billups v Howell Schools, 167 Mich App 407 (1988); Bonnette v West Ottawa Public Schools, 165 Mich App 460 (1987).

Because Section 27 (i) was intended to be applied to personnel whose services were meaningfully linked to the academic year, and Mr. Minick is not such an employee, he asks the Court to reverse the decision below.

Appellee Ann Arbor Public Schools answers that the record below does not support Minick's argument that the need for security and other services at the library does not diminish during the summer months when schools are not in session.

Appellee responds further that the legislative intent, as indicated by the plain language of the school denial provisions of The Act, shows that MESC's determination is clearly not wrong and is supported by the record.

Appellee distinguishes the cases relied on by Appellant in support of his argument that there is a lack of "linkage" between his job and the academic calendar. The testimony of Ron Whitmore, the School District's Executive Director of

Employee Relations and Staff Development at the Referee hearing was:

> "... that the need of the library generally coincides with the need of the school year. That is from September to May.. is when the kinds of security problems come up that we're talking about here."

This testimony is competent, material and substantial and supports the conclusion of the Referee, the Commission and the Board of Review that "claimant's job category falls within the provision of Section 27 (i) (2) requiring benefit ineligibility."

Appellee MESC also responds that the decision below was supported by competent, material and substantial evidence and is not contrary to law. The legislative intent to exclude certain employees from unemployment coverage is clearly indicated in the statute and is supported in Larken v Bay City Public Schools, supra, and Paynes v Detroit Bd of Ed, supra.

Further, that a link exists between Appellant's job and the academic year. The testimony below indicates the need for library security coincides with the student population's library utilization during the school year.

The Court has reviewed the record below, the statute, and the cases cited in support. Based on the testimony given

by Mr. Minick and Ron Whitmore at the hearing of September 28, 1989, the referee found that Minick's job category fell within the provisions of subsection 27 (i) (2) and that he was given reasonable assurance of employment in the Fall of 1989. He based these findings in part on Minick's own testimony that he held a security-type position; that it was offered as a ten-month position; and that he was advised that the job would again be available in the fall. (transcript pp. 5-6). He further considered Ron Whitmore's testimony that all para professional positions within Mr. Minick's bargaining unit were ten month positions and that the need (for the position) coincided with the school year (transcript p. 13).

Finally, he rejected Minick's reliance on subsection 27 (i) (6) in that the particular provision was meant to apply to "other than" employees of an institution of "higher education". Within the definition of the statute the Ann Arbor Public School system is not an institution of "higher education" (Referee Findings of Facts and Reasons, dated October 3, 1989 (p. 3).

Minick was employed by the Ann Arbor Public Schools, an educational institution. He was employed in other than an instructional, research or principal administrative capacity. The period of time in which his services were not required corresponded to the time between academic years and to an

established and customary vacation period. His employment was terminated and he was given a reasonable assurance of employment for the succeeding academic year. All conditions for application of the school denial period were met. Larken v Bay City Schools, 89 Mich App 199 (1979); Michigan State Employees Assn v MESC, 94 Mich App 677 (198) and Paynes v Detroit Board of Education, 150 Mich App 358 (1986).

Further, Appellant's reliance on the cases he cited is misplaced. The instant case does not involve an unexpected (emphasis supplied) unforeseen or unusual layoff (Wilkerson); it does not involve a layoff contrary to the contract or to customary policies (Billups); nor does it involve unemployment which did not fall between successive academic years (Bonnette).

This Court finds that there is competent, material and substantial evidence on the record to support the decision of the MESC which is not contrary to law.

It is Therefore Ordered that the decision of The Michigan Employment Security Board of Review is hereby affirmed.

Melinda Morris
Circuit Judge