

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

SCHOOL DISTRICT OF THE VILLAGE
OF SPRING LAKE, OTTAWA COUNTY,

Plaintiff,

v

OPINION

File No. 81-5806-AV

CHARLES A. BASSETT, DEBORAH L. BOYINK,
SARAH P. GUTEK, DANIEL A. HILLARY,
PATRICIA I. HOLMES, MARY B. LOBBEZOO,
and THE MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Defendants.

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Attorney for Plaintiff

ELI GRIER (P14374)
Attorney for Defendants

FRANK J. KELLEY, Attorney General
of the State of Michigan
By: JAMES H. WHITE (P22254)
Assistant Attorney General
Attorneys for Defendant
Michigan Employment Security Commission

Appellant School District seeks judicial review of a decision of the Michigan Employment Security Board of Review which found that certain tenured teacher employees of appellant school district lacked "reasonable assurance" that they would be re-employed for the 1980 - 81 school year, and hence that they were entitled to certain unemployment benefits.

This court reviews such decisions pursuant to the terms of MCLA 421.38,
and a court may reverse such a 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 Michigan Supreme Court stated in Smith v Employment Security Commission, 410 Mich 231, on page 256, as follows:

Our function as a reviewing court is limited to a determination of whether the findings of the MESC are supported by competent, material and substantial evidence on the whole record. MCLA 421.38; MSA 17.540. This Court cannot substitute its own judgment for that of the administrative agency if there is substantial evidence which supports the agency."

The Michigan Legislature in 1977 revised the statutory provisions applicable to the employment status of school teachers during the period between academic years, by excluding teachers from receiving unemployment benefits for such period only if there is "reasonable assurance" of employment during the next academic year. (MCLA 421.27 (i) (1).

The case of Larkin v Bay City Schools, 89 Mich App 199, interpreted prior statutory language and noted the change in legislation which occurred in 1977.

The term "reasonable assurance" of employment, in the absence of statutory definition or specific legal meaning, should be given its usual, common or ordinary meaning. Bingham v American Screw Products and MESC, 398 Mich 546,563.

The word "assurance" has been defined in various sources as "a pledge, guarantee or surety, a representation or declaration tending to inspire full confidence, a making secure." Black's Law Dictionary, revised 4th edition and Words and Phrases.

Thus, claimants are not entitled to compensation if they were reasonably secure and confident in their expectation of employment for the next academic year.

The record discloses a number of facts and circumstances which would lead reasonable persons to be insecure regarding their future employment:

1. The first millage election on June 9, 1980 resulted in a partial defeat of the millages requested.
2. The Superintendent of Schools prepared a document entitled "Tentative Lay-Off Roster-Professional Staff", which he shared with teachers' association representatives about June 19, 1980, and which was communicated to claimants. (R 127, R 34, R 36)

Such document listed all but one claimant and stated in part as follows:

"This is a tentative list of professional personnel that will in all probability be placed on lay-off status as of June 23, 1980, in anticipation of uncertain employment due to unknown and insufficient funds for 1980 - 81." (emphasis added)

3. The Board of Education Minutes of June 23, 1980, under the heading of "Staff Assignments/Lay-offs" stated in part as follows: The Board approved the administrative recommendation to tentatively notify a number of staff members that the possibility existed that they might be placed on layoff should the August 26 millage election be defeated. While further work sessions will be held to refine both the program adjustments and possible staff layoffs, the staff members identified as currently being considered for layoff at a later date include the following: Daniel A. Hillary, Charles A. Bassett, Deborah L. Boyink, Sarah P. Gutek, Patricia I. Holmes and Mary B. Lobbezoo.

Four out of six claimants filed unemployment claims on June 30, 1980, the fifth claimant filed a claim on July 1, 1980, and the sixth claimant filed a claim on July 14, 1980.

We conclude that the decision of the Board of Appeals that claimants lacked reasonable assurance of employment is supported by competent, material and substantial evidence on the record.

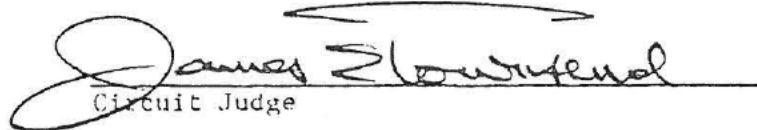
Terms such as "probability of layoff" and "uncertain employment" were chosen by the superintendent of schools to describe the situation relating to those fifteen out of one hundred teachers singled out for special attention.

As of June 30, 1980 claimants employment status was insecure, uncertain and very much in doubt.

The statutory language recited in the July 7, 1980 letter was insufficient to alter such status in view of the preceding circumstances.

There was a rational basis for the decision of the Board of Appeals in this case. Their decision is affirmed.

Dated: June 10, 1983


Circuit Judge