STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BENNETT W. HART,

Claimant-Appellant,

-vs-

File No. 82-30514-AE

OPINION

LANSING COMMUNITY COLLEGE and MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellees.

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This is an appeal of a decision denying Appellant's claim for unemployment compensation benefits under MCLA 421.1 et seq, MSA 17.501 et seq. The decision was based upon MCLA 421.27(i)(1), MSA 17.529(i)(1), which precludes the payment of unemployment compensation benefits to persons employed in an instructional, research or principal administrative capacity for an institution of higher education.

Appellant is a photography instructor and has been at Lansing Community College since the fall of 1977. Except for one term, he taught continually through the end of fall term 1980. Appellant applied and received unemployment benefits for the period

of August 17, 1980 through September 27, 1980. Appellant was subsequently found ineligible for benefits because the period in question was considered a "denial period" under MCLA 421.27(i), MSA 17.529(i). The Commission's redetermination decision affirmed the finding of ineligibility. Appellant appealed to the referee who found Appellant ineligible under Section 27(i) of the Employment Security Act. The Michigan Employment Security Board subsequently affirmed the Referee's finding. Appellant appeals to this Court pursuant to Section 38 of the Employment Security Act, MCLA 421.38, MSA 17.540.

This case turns on whether Appellant had "reasonable assurance" of reemployment with Lansing Communtiy College in the fall of 1980 thereby making him eligible for unemployment benefits under MCLA 421.27(i), MSA 17.529(i). This Court must affirm the decision of the Board of Review unless that decision is contrary to law or not supported by competent, material and substantial evidence on the whole record. MCLA 421.38(1), MSA 17.540(1).

The term "reasonable assurance" is found in the Employment Security Act, MCLA 421.27(i), MSA 17.529(i):

> "(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, under either of the following situations:
>
> "(a) The week 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 educational institution in the second of the academic years or terms, whether or not the terms are successive.

"(b) The week commences during an established and customary vacation period or holiday recess if the individual performs the service in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the service in the period immediately following the vacation or holiday recess." (Emphasis added.)

Appellant claims that he lacked "reasonable assurance" of reemployment with Lansing Community College since his courses were tentatively scheduled and his prior written contract stated that services beyond termination date were not to be "anticipated". The referee found that Appellant was a part-time instructor at the time he initially applied for unemployment compensation benefits. Although Appellant had part-time status, he worked ten consecutive terms before his courses were cancelled for lack of enrollment. The referee made the following findings:

"He did not have a contract as of the end of the Summer Term because that was not the policy or practice. He receives, as other part-time faculty members do, the contract at the commencement of the term. The college is then able to determine whether all classes planned for claimant are going to 'go' and the contract is given accordingly. However, it is held that claimant had a reasonable assurance that he was going to work in the next academic term and he did. The employer cannot give a guarantee in this type of case, but only a reasonable assurance. Claimant was well aware, due to his length of service as a part-time faculty member, that classes could be cancelled or rearranged at the last moment. However, the employer had no other way to do it and, again, claimant was fully aware of this. Claimant did not maintain that he was given less hours but he had, in fact, been given over twice as many work hours, including laboratory hours, as he has had in the Summer Term." (Emphasis added.)

MCLA 421.27(i) does not define the term "reasonable assurance' However, the term is found in the 1976 amendment PL 94-566 of the Federal Unemployment Tax Act, 26 USCA 3301-3311. The Federal act is substantially the same as the Michigan law concerning unemployment benefits for school employees. The legislative history is instructive on the meaning of the term "reasonable assurance". The legislative history found at US CODE CONG AND ADMIN NEWS, 94th Congress, 1976 Vol 5 at 6036, contains the following:

> "For purposes of this provision, the term 'reasonable assurance' means a written, verbal or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term. A contract is intended to include tenure status." (Emphasis added.)

The term "reasonable assurance" as used in the statute must mean something less than "contract", if the phrase is to have any legal significance. In this case, the course of dealing between the parties reflects a mutual understanding that no guarantee of future employment could be made. However, a reasonable assurance of employment is given in that, if a sufficient number of students registered for classes, Appellant would be employed. This is evidenced by publication of Appellant's name in the schedule book coupled with the consistency of his employment with the college.

The Legislature did not intend to grant unemployment benefits to those school employees who were likely to return to work following an established vacation period even in the absence of a binding contract. The ordinary meaning of the statute's language evidences this intent. The Legislature was cognizant of the character of school employment as well as the limited financial resources of school systems. Larkin v Bay City Schools, 89 Mich App 199 (1979), 280 NW2d 483, Lv Ap Den 406 Mich 979 (1979)

recites the legislative policy in this regard:

> "Section 27(i) represents a discretionary legislative policy judgment that school districts should not be exposed to liability for payment of unemployment benefits during those periods of the year when their employees traditionally do not work. Such a policy is amply justified by the atypical character of school employment and the limited financial resources of school systems. To require that school districts pay their non-professional employees benefits for the periods in question would greatly increase their expenditures for unemployment compensation. The interest in maintaining a fiscally sound social welfare program by restricting the assessments which finance the system to reasonable levels has been upheld in recent years as a legitimate basis for the drawing of classifications resulting in the exclusion of various social services, including unemployment compensation." (Emphasis original.)

Although Larkin involved non professional employees, the policy ennunciated therein is equally applicable to professional employees including teachers. Michigan State Employees Association v Michigan Employment Security Commission, 94 Mich App 677, 290 NW2d 729 (1980).

The hearing referee correctly applied the term and the record justifies a finding of "reasonable assurance" of continued employment, given the unique situation of community colleges in scheduling classes. The hearing referee's finding is supported by competent, material and substantial evidence on the whole record.

Affirmed.

JAMES R. GIDDINGS
Circuit Judge

DATED: July 29, 1983