ırt of Appeals, State of Michi

ORDER

Hilda R. Gage
Presiding Judge

Patricia Hofmeister v Armada Area Schls

Docket # 199806

L.C. # 96-003916-AE

Mark J. Cavanagh
Richard Allen Griffin
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

JUN 0 9 1997
Date

Ella Williams
Chief Clerk

A. D. No. B93-00816RO1-131220
S. S. No. [redacted]
B. O. No. 17

STATE OF MICHIGAN
IN THE 16TH JUDICIAL CIRCUIT COURT

PATRICIA HOFMEISTER,
SHERYL KENNEDY and
CHERYL PILATO,
Claimant-Appellants,

v

Case No. 96-3916-AE
Hon. RAYMOND R. CASHEN

ARMADA AREA SCHOOLS,
Employer-Appellee,

and MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

Appellee.
_____/

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_____/

ORDER AFFIRMING BOARD OF REVIEW DECISION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

PATRICIA HOFMEISTER,
SHERYL KENNEDY and
CHERYL PILATO,

Claimants-Appellants,

vs. NO. 96-3916 AE

ARMADA AREA SCHOOLS,

Employer-Appellee

and

MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

Appellee.
_____/

OPINION AND ORDER
OF THE COURT

Claimants, Patricia Hofmeister, Sheryl Kennedy and Cheryl Pilato, appeal as of right from a March 15, 1996 decision of the Michigan Employment Security Commission Board of Review reversing the hearing referee's determination that they were not disqualified from receiving unemployment benefits.

I. BACKGROUND

The material facts are not in dispute. Claimants were school teachers for the Armada Area Schools for the 1991-1992 school year whose employment was governed by a collective bargaining agreement. At the time, the Armada Area Schools were operating with a deficit.

A millage increase was defeated June 8, 1992. The school year ended June 11, 1992. The Armada Board of Education began examining its options--including teacher layoffs--to reduce its budget shortfall. Claimants were among those with the lowest seniority who would be affected by any layoff and filed for unemployment benefits.

A second millage increase election was scheduled for September 14, 1992. Following a Board of Education meeting on August 18, 1992, claimants were notified by letters dated August 19, 1992, that they would be laid off effective September 29, 1992. However, when the millage increase passed September 14, 1992, the Board of Education decided September 15, 1992, to recall claimants from layoff status. Consequently, claimants were never actually laid off and did not suffer any loss of pay.

Meanwhile, claimants' applications for unemployment benefits were denied by claims examiners for the Michigan Employment Security Commission pursuant to MCL 421.27(i)(1); MSA 17.529(i)(1). Claimants requested a referee hearing which was held November 3, 1993. In a Decision dated March 16, 1994, the hearing referee concluded claimants had not received reasonable assurances of employment for the 1992-1993 school year and, therefore, were not disqualified from receiving benefits.

The Armada Area Schools filed an appeal to the Michigan Employment Security Commission Board of Review on April 7, 1994. On March 15, 1996, the MESC Board of Review reversed the referee's decision.

Claimants now appeal.

II. STANDARD OF REVIEW

MCL 421.38(1); MSA 17.540(1) provides in pertinent part:

> The circuit court of the county in which the claimant resides or the circuit court of the county in which the claimant's place of employment is or was located...may review questions of fact and law on the record made before the referee and the board of review involved in a final order or 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 is not supported by competent, material, and substantial evidence on the whole record.

In Becotte v Gwinn Schools, 192 Mich App 682, 685; 481 NW2d 728 (1992), the court stated:

> An order or decision of a MESC Board of Review may be reversed only where the Court finds that the order or decision is contrary to law or not supported by competent, material, and substantial evidence. [Cites omitted.] Substantial evidence is that which a reasonable mind would except as adequate to support a decision. [Cite omitted.] Further, substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. [Cite omitted.]

In Core v Traverse City, 89 Mich App 492, 498; 280 NW2d 569 (1979), the court cautioned:

> The court is not to determine whether the probabilities preponderate one way or the other but simply to determine whether the evidence is such that it will justify the finding as a legitimate inference from the facts proved, whether that inference would or would not have been drawn by the appellate tribunal.

III. REASONABLE ASSURANCE

Claimants assert they were not provided reasonable assurance of anything other than minimal employment in the 1992-1993 school year. Rather, the only assurance they had was that they would be laid off one month into the new school year. Therefore, claimants argue they did not have reasonable assurances of employment in the 1992-1993 school year with economic terms and conditions similar

to those of the 1991-1992 school year so as to be disqualified from receiving benefits.[1]

In response, the Armada Area Schools assert claimants continued to work into the 1992-1993 school year under the same collective bargaining agreement ("CBA") which governed the terms and conditions of their employment during the 1991-1992 school year. Claimants were not scheduled to be laid off until after the start of the 1992-1993 school year and were recalled from layoff status before having actually been laid off. Therefore, claimants should be disqualified from receiving benefits.

MCL 421.27(i)(1); MSA 27.529(i)(1) provides in pertinent part:

> With respect to service performed...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...that commences during the period between 2 successive academic years...if the individual performs the service in the first of the academic years or terms and <u>if there is a contract or a reasonable assurance</u> that the individual will perform service...in the second of the academic years or terms, whether or not the terms are successive. [Emphasis added.]

In the instant matter, claimants' employment was indisputably subject to and governed by a contract, the CBA. The CBA clearly provided, in pertinent part, for employment until such time as layoff notices were provided and became effective. Layoff notices were not provided to claimants until August 19, 1992 that they would be laid off effective September 29, 1992. Therefore, as claimants had a contract to perform services for the 1992-1993 school year during the time for which they are seeking unemployment

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[1]The MESC filed a brief concurring with claimants.

benefits, claimants are not entitled to benefits.[2]

Accordingly, the MESC Board of Review decision is supported by competent, material and substantial evidence on the whole record.

IV. CONCLUSION

For the reasons set forth above, the March 15, 1996 decision of the Michigan Employment Security Commission Board of Review is AFFIRMED. Claimants, Patricia Hofmeister, Sheryl Kennedy and Cheryl Pilato, are DISQUALIFIED from receiving unemployment benefits pursuant to MCL 421.27(i)(1); MSA 17.529(i)(1).

IT IS SO ORDERED.

GEORGE C. STEEH, SR.

GEORGE C. STEEH, SR.
Visiting Circuit Court Judge
In abs of RAYMOND R. CASHEN

Dated: November 20, 1996

cc: Eli Grier
C. George Johnson
Max E. Simon

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COUNTY CLERK
BY [illegible]
DEPUTY CLERK

[2]Having resolved this issue against claimants, the parties' remaining arguments need not be addressed.