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DENIAL PERIODS

Sections 27(i), (j), (o), (p)

Section 27(i)

DENIAL PERIOD, School hall monitor, Early severance by school, Equal protection, School district calendar, Successive academic years

CITE AS: Larkin v Bay City Public Schools, 89 Mich App 199 (1979); lv den, 406 Mich 979 (1979)

Appeal pending: No

Claimant: Mary A. Larkin
Employer: Bay City Public Schools
Docket No: B75 10784 50688

COURT OF APPEALS HOLDING: (1) The denial period for school employees is constitutional. (2) Advance notice of termination is not early severance for a school employee. (3) An academic year is not affected by a claimant's particular circumstances.

FACTS: The claimant, a hall monitor, did not work during the summer vacation periods. "By letter dated March 25, 1975, plaintiff was informed by the Bay City School District that it did not plan to rehire her for the 1975-1976 school year, and that her employment was terminated as of June 7, 1975." The claimant was denied benefits for the summer. She was recalled in September, 1975.

DECISION: The claimant is subject to the school denial period under Section 27(i) of the Act.

RATIONALE: "First, the most reasonable interpretation of Section 27(i)(3) requires that mere giving of notice of a future termination date does not serve to presently abrogate the employment relationship."

"Plaintiff contends that because she would not be reemployed in September, 1975, there is no succeeding academic year."

"The existence of an academic year, as envisioned by the legislature, is to be determined by the objective criteria of the calendar established by the district, and not by the individual's particular circumstances."

"Finally, the record shows that plaintiff did, in fact, resume her work in September of 1975, thus mooting her claim."

"[W]e conclude that the instant legislation is to be examined by the traditional rational basis standard under which it comes before us clothed with a presumption of constitutional validity."

Section 27(i)

DENIAL PERIOD, Principal administrator, Professional, Equal protection, Rational basis, State school named in Act, Substantial relation

CITE AS: Michigan State Employees Association v ESC, 94 Mich App 677 (1980); lv den, 408 Mich 952 (1980)

Appeal pending: No

Plaintiffs: Michigan State Employees Association, et al
Defendants: Michigan Employment Security Commission, et al
Date: January 9, 1980

COURT OF APPEALS HOLDING: Application of the school denial period to instructional, research, professional and principal administrative employees of three named state schools is permitted by the United States Constitution.

FACTS: "The individual plaintiffs are a class of employees described as classified civil service employees of the State of Michigan employed in instructional, research, professional or principal administrative capacities at the State Technical Institute and Rehabilitation Center, the Michigan School for the Blind, and the Michigan School for the Deaf. They are normally employed 42 or 46 weeks per year being laid off during the summer close down of these institutions."

DECISION: The plaintiffs' complaint is dismissed.

RATIONALE: "The state's failure to treat plaintiffs as it does other civil service employees who qualify for benefits during seasonal layoffs is not arbitrary and irrational. They are treated as are all other employees involved in the instruction and administration of local school and community college educational facilities. It appears that the legislature has uniformly excluded some seasonal employees from unemployment benefits for the purpose of protecting the fiscal integrity of the compensation program and possibly because the legislature held the opinion that employees know of the seasonal layoff well in advance (and may consider it an employment benefit) and are not faced with the same economic crunch' as those who are unpredictably laid off during the year.

"The challenged statutory provision meets not only the 'rational basis' test, but also bears a 'substantial relation' to the purpose of the law."

Section 27(i)

DENIAL PERIOD, Substitute teacher, Reasonable assurance, Full time contract teacher

CITE AS: MESC v Orchard View School District No. 82-16963 AV, Muskegon Circuit Court (January 12, 1983)

Appeal pending: No

Claimant: Susan D. Stone,
Employer: Orchard View School District
Docket No: ERB81 12652 80417

CIRCUIT COURT HOLDING: Substitute teachers are not excepted from the school denial provisions of the Act.

FACTS: Claimant, a contract teacher, was laid off for lack of work. She applied for unemployment benefits and began working as a substitute teacher for Orchard View and Mona Shores School Districts. Mona Shores School District provided one or two days a week of substitute teaching. She was given assurance that she would be on the substitute teachers' list for Mona Shores School District for the following semester.

DECISION: Claimant is ineligible for benefits.

RATIONALE: The Act itself does not spell out that substitute work for a contract full time teacher excepts Claimant from the denial provisions of the Act. "When exceptions are being dealt with, it is necessary that there be a strict interpretation of the Act."

Section 27(i)

DENIAL PERIOD, Past performance as a substitute, Reasonable assurance, Substitute teacher

CITE AS: Riekse v Grand Rapids Public Schools, 144 Mich App 790 (1985)

Appeal pending: No

Claimant: Nancy Riekse
Employer: Grand Rapids Public Schools
Docket No: B83 16325 93580W

COURT OF APPEALS HOLDING: If a teacher had a reasonable expectation of re-employment during the next academic year, unemployment compensation may be properly denied.

FACTS: Claimant had been a substitute teacher for the past seven years in the employer's school system. During the ending school year, claimant had taught 125 days. Claimant received a letter from the employer indicating that, "based upon the best financial data available and a comprehensive analysis of projected staffing needs," she could be reasonably assured that she would be offered a substitute teaching position during the incoming school year. Claimant returned an application for employment as a substitute and attended an in service meeting for teachers on September 6, 1983.

DECISION: Claimant is ineligible for unemployment benefits.

RATIONALE: Claimant had substantial and reasonable assurance that she would be re-employed. She had been employed as a substitute teacher for seven preceding years. The letter expressly stated claimant was reasonably assured of employment. Claimant had attended in service training. The term reasonable assurance does not require a formal written or oral agreement to rehire.

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Tenured teachers, Millage vote

CITE AS: School District of the Village of Spring Lake, Ottawa County v Bassett, No. 81-5806-AV, Ottawa Circuit Court (June 10, 1983)

Appeal pending: No

Claimant: Charles Bassett, Deborah L. Boyink, et al
Employer: Village of Spring Lake
Docket No: B80 16573 R01 75319

CIRCUIT COURT HOLDING: As of June 30, 1980, claimants' employment status was insecure, uncertain and very much in doubt.

FACTS: The school district scheduled a millage vote for June 9, 1980. The millage vote failed. On June 2, 1980,the school district sent a letter to claimant(s) notifying them that they no longer had reasonable assurance of reemployment. A second millage vote was scheduled for August 26, 1980. The school district sent a letter to Claimant(s) on July 7, 1980, extending reasonable assurance based upon the potential passage of the millage.

DECISION: Claimants are eligible for benefits.

RATIONALE: Black's Law Dictionary defines "assurance" as "a pledge, guarantee, or surety, a representation or declaration tending to inspire full confidence, a making secure." The record discloses a number of facts that would make claimants insecure regarding their future employment: (1) The first millage vote failed. (2) The Superintendent of Schools prepared a "Tentative Lay-Off Roster-Professional Staff," which he shared with claimants. The roster stated that the claimants "will in all probability be placed on lay-off status as of June 2, 1980, in anticipation of uncertain employment ... " (3) Claimants' names were placed in the Board of Education minutes of June 23, 1980 as being those identified for layoff.

The statutory language recited in the July 7, 1981 letter was insufficient to alter ... the preceding circumstances.

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10, 15:NA

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Community college, Part time instructor

CITE AS: Hart v Lansing Community College, No. 82-30514-AE, Ingham Circuit Court (July 29, 1983)

Appeal pending: No

Claimant: Bennett W. Hart
Employer: Lansing Community College
Docket No: B81 00288 76742

CIRCUIT COURT HOLDING: The course of dealing between the parties reflects a mutual understanding that no guarantee of future employment could be made.

FACTS: Claimant was a part time instructor who had worked ten consecutive terms before his courses were cancelled for lack of enrollment. Claimant, as other part time faculty, receives his contract at the commencement of the term when the college is able to determine whether all classes planned for Claimant are going to "go."

DECISION: Claimant is not eligible for unemployment benefits.

RATIONALE: The Court cited the legislative history on the meaning of the term "reasonable assurance," as found in US CONG. AND ADMIN. NEWS, 94th Congress, 1976, Vol. 5 at 6036: "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" must mean something less than a "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. 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 Court cited Larkin v Bay City Schools, 89 Mich App 199 (1979) for the legislative policy and Michigan State Employees Association v MESC, 94 Mich App 677, 290 (1980).

11/90
6, 15, d10:NA

Section 27(i)

DENIAL PERIOD, Non-teaching employees, Custodial workers, Customary vacation period

CITE AS: Howell Public Schools v Billups, 167 Mich App 407 (1988).

Appeal pending: No

Claimant: Robert A. Billups, et al
Employer: Howell Public Schools
Docket No: B63 06942 R01 95895 et al

COURT OF APPEALS HOLDING: When non-teachers had a tradition of working from 12-26 thru 1-1 and the collective bargaining agreement provided for a 52 week work year, they had a reasonable expectation to work during that period and the layoffs in question did not occur during an established or customary vacation period under 27(i)(2)(b).

FACTS: The claimants were custodial and maintenance employees. Their unions' bargaining agreement with the employer provided for work on an hourly basis for 52 weeks per year not including holidays. Their work schedule included the days between Christmas and New Years, spring break, and summer vacation.

The claimants were notified of a 1 week layoff 12-26-82 thru 1-1-83. This had never occurred before during this time and the period was not an established holiday for the claimants although classes were not in session.

DECISION: The school denial period is not applicable. Claimants are entitled to benefits under Section 27(i)(2)(b) of the Act.

RATIONALE: Based upon their previous history and their collective bargaining agreement the claimants had a reasonable expectation of working between 12-26 and 1-1. While school may not have been in session, this is not the determinative factor as to what constitutes an "established and customary vacation period". Rather it refers to periods where the employees did not traditionally work and did not have a collective bargaining agreement to work.

Section 27(i)

DENIAL PERIOD, School bus driver, Teacher, Academic term, Academic year, Compensable week

CITE AS: Gillette v Jackson Public Schools, No. 79 017594, Jackson Circuit Court (July 14, 1980)

Appeal pending: No

Claimant: Kathleen A. Gillette, et al
Employer: Jackson Public Schools
Docket No: B76 19061 54930

CIRCUIT COURT HOLDING: Where Labor Day is the first day of a school district's academic year, the week of the holiday is a compensable week.

FACTS: These appeals involved 10 teachers and a school bus driver.

"Claimant's applications for Unemployment benefits for the week containing Labor Day were denied by the Michigan Unemployment Security Commission under Section 27(i)(2) and (4) of the Michigan Employment Security Act (MSA 17.529)(i)(2) and (4)."

DECISION: The week ending September 11, 1976 is a compensable week for the claimants.

RATIONALE: "Appellees base their position on Section 50(a) of the Act (MSA 17.554(a) which provides: 'Week' means calendar week, ending at midnight Saturday ... '"

"And Appellees argue that pursuant to Section 50(a) and then existing commission procedures, compensable weeks for unemployment benefits ran from Sunday through Saturday and if an individual was disqualified for one day of the week, he was disqualified for the entire week."

"Appellees' narrow interpretation of the Statute does not carry out the Declaration of Policy of the Act ... "

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Substitute list

CITE AS: Wisniewski v Bay City Board of Education, No. 82-3591, Bay Circuit Court (June 25, 1984)

Appeal pending: No

Claimant: Debra A. Wisniewski
Employer: Bay City Board of Education
Docket No: B81 13659 79554

CIRCUIT COURT HOLDING: Reasonable assurance means that the chances ought to be fairly strong that the employee will come back to work.

FACTS: Claimant was informed that during the school year 1981-82, Claimant would perform services for the school district "as needed and when called." During the school year 1980-81, Claimant had performed "long term subbing" for the school district.

DECISION: Claimant is not subject to the school denial period.

RATIONALE: The school board could have set up a priorities list so that Claimants could have reasonable assurance that they would likely work, especially if the school board adds a statement as to its normal attrition rate or history. "All the employee got was a letter saying she had something which the letter did not provide to her ... she had nothing else to go on." The notice did not give the employee any reasonable assurance.

Section 27(i)

DENIAL PERIOD, Academic year, Migrant program

CITE AS: Bonnette, et al v West Ottawa Schools, 165 Mich App 460 (1987); lv den 430 Mich 870 (1988).

Appeal pending: No

Claimant: Julie Bonnette, et al
Employer: West Ottawa Public School
Docket No: B84 01754 96313

COURT OF APPEALS HOLDING: "Down time" in a school system's migrant education program does not qualify as a denial period for purposes of Section 27(i) of the Act where the beginning and end of the down time were not fixed in advance, but rather depended on the growing season for crops .

FACTS: Claimants were employed in a special migrant teaching program operated by employer. The program operated during two segments of the employers academic year. The first part ran from September through October, and the second from March through June.

DECISION: Claimants are not subject to the denial period provisions of Section 27(i) of the Act.

RATIONALE: "In the instant case, the period in question, i.e. the period between the fall and spring segments of the migrant program, while a predictable layoff period because of the history of the program, was not a recess period similar to the recess periods taken for summer vacation for recognized holidays. Rather, the period of unemployment was due to the lack of work resulting from a decrease in the student population. If the migrant population had unexpectedly stayed, West Ottawa would no doubt have continued the employment of Bonnette, Quintalla, and Romos in the program. Thus, we find that even though the period of layoff could be anticipated (since the decrease in the student population could be anticipated) it was not a period established as a customary 'vacation period' or holiday recess".

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Guaranteed substitute work, Economic terms

CITE AS: Paynes v Detroit Board of Education, 150 Mich App 358 (1986).

Appeal pending: No

Claimant: Linda Paynes & Valerie Whalen
Employer: Detroit Board of Education & School Dist-City of Detroit
Docket No: B82 18913 86673 & B81 22828 81799

COURT OF APPEALS HOLDING: "Thus, we hold that to be denied unemployment benefits pursuant to MCL 421.27(i)(1)(a); MSA 17.529(i)(1)(a), the school denial period provision, a teacher must be (1) 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."

FACTS: During the 81-82 school year claimants Whalen and Paynes were both Regular Contract Teachers. Due to economic conditions both were notified they would not be regular teachers the following year. However, applications were provided for regular emergency substitute teacher (RES) positions. An RES is guaranteed employment every day school is open, however, the benefits and wages are substantially less than for contract teachers.

DECISION: Claimant Paynes did not receive reasonable assurance and is not subject to the school denial period. Remanded for additional fact-finding regarding claimant Whalen.

RATIONALE: The court specifically declined to incorporate the "suitability" criteria contained in Section 29(6) and (7) of the MES Act into the school denial provision of Section 27(i). However, the court said, "We agree with the MESC that wage disparity should be considered before denying a teacher unemployment benefits when a contract or reasonable assurance of employment in a instructional, research or principal administrative capacity is proffered for the successive academic year. We also agree ... that, for purposes of the school denial period provision, an offer or reasonable assurance to an employee previously employed in either an instructional, research or principal administrative capacity of reemployment for the following academic year in any of these three capacities is adequate with respect to the type of employment. Employment in any of these capacities is legislatively-deemed to be appropriate with respect to the type of proffered employment."

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1, 9:I
3, 14:NA

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Millage vote rescheduled

CITE AS: Shane (Charlevoix Emmet Intermediate School District) 1983 BR 80508 (B81 16586).

Appeal pending: No

Claimant: Carole J. Shane
Employer: Charlevoix Emmet Intermediate School District
Docket No: B81 16581 80508

BOARD OF REVIEW HOLDING: Once a millage vote has been defeated, the employer must have more than the rescheduling of a second millage vote to support a claim that Claimant has reasonable assurance.

FACTS: Claimant was laid off at the end of the school year. A millage vote was defeated on June 8, 1981. On July 9, 1981, the employer informed the Commission that Claimant did not have reasonable assurance of employment for the fall. On July 14, 1981, the employer sent a "recall" letter to the claimant alleging reasonable assurance because a second millage vote was scheduled for September 8, 1981, which the employer was confident would be successful.

DECISION: Claimant is not subject to the denial period.

RATIONALE: The Commission, a Referee, or the Board itself cannot properly consider evidence as to the mood of voters or gauge electoral probabilities or the reasonableness of ballot proposals ... to "go behind" the proposal as it were. Claimant did not have reasonable assurance on July 14, 1981. The decision of the Referee is reversed by a majority of the full Board of Review.

Section 27(i)

DENIAL PERIOD, Academic year, Customary vacation periods, Adult education

CITE AS: Wilkerson v Jackson Public Schools, 170 Mich App 133 (1988); lv den 432 Mich 878 (1989).

Appeal pending: No

Claimant: Susan A. Wilkerson, et al
Employer: Jackson Public Schools
Docket No: B83 18600 96681

COURT OF APPEALS HOLDING: The summer breaks for this program for the years at issue were not periods between successive academic years or established and customary vacation periods. As such the provisions of 27(i) were not applicable.

FACTS: The claimants were teachers and aides in the Adult Basic Education program. Students may enroll at any time during the year. Some students complete the program in several class sessions, others take years. Advancement depends on the individual's progress. Prior to 1982 this program operated year-round with only a two week break in the summer. In 1982 this break was expanded to 4 weeks. In 1983 the break increased to 10 weeks. In the 1983-84 school year the program's summer instruction was eliminated and the program was to operate on the same schedule as the K-12 school program.

DECISION: Claimants are not ineligible under school denial period of Section 27(i).

RATIONALE: "The length of the ABE instructional periods is determined by budgetary constraints rather than by the length of time needed to complete the requirements of a particular grade or course. Students do not, as a matter of plan, complete any particular grade or course within any specified time period and they re-enter the program after each break at the same instructional level as when class sessions ended. See Bonnette, 165 Mich App at 472-473. We believe that, as a matter of law, the break periods in the ABE program cannot be classified as periods between two successive academic years.... We also conclude that the summer breaks between 1982 and 1984 cannot be considered established and customary vacation periods.... The summer break schedule changed each year during the three-year transition, making the length of the break too unpredictable to be considered established and customary. We agree with the trial court that the legislative purpose of MESA was to protect workers from the 'economic crunch' caused by unexpected periods of unemployment such as those created by the school district in this case."

Section 27(i)

DENIAL PERIOD, Academic Year, Delayed school opening, Unjust enrichment

CITE AS: Rogel v Taylor School District, 152 Mich App 418 (1986)

Appeal pending: No

Claimant: Ann Rogel, et al
Employer: Taylor School District
Docket No: B81 88405 87051

COURT OF APPEALS HOLDING: The employer cannot unilaterally alter the definition of the academic year set by the terms of a collective bargaining agreement merely for budgeting reasons.

FACTS: Claimants' union and the employer negotiated a collective bargaining agreement requiring the school year to commence on September 1, 1981. Because of financial problems created by millage defeats, employer postponed the start of the school year until September 28, 1981. The employer continued the school year through June 1982 for a period equal to the time lost at the beginning of the year.

DECISION: Claimants entitled to benefits pursuant to Section 27(i)(1) and (4) when the employer unilaterally delays the start of the academic year for budgetary considerations.

RATIONALE: "Seizing on the phrase 'as defined by the educational institution,' the school district now argues that the 1981-1982 school year should be defined under Section 27(i)(4) as beginning on September 28. Acceptance of that argument would mean that a school district could unilaterally change the beginning and ending dates of the school year at any time without its employees being able to collect unemployment benefits. Such an interpretation would defeat the purpose of the MESA, which was intended to soften the economic burden of those who through no fault of their own, find themselves unemployed. See General Motors Corp. v Erves (On Rehearing), 399 Mich 241, 252; 249 NW2d 41 (1976); MCL 421.2; MSA 17.502. The school year was defined by contract as beginning September 1. When claimants did not start work on September 1, their period of unemployment began not in a 'period between successive academic years,' but rather during an academic year. The denial period did not apply."

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Budget information

CITE AS: MESC v Falkenstern, No. 98730 (Mich App February 23, 1988); lv den 431 Mich 911 (1988).

Appeal pending: No

Claimant: Ann Falkenstern, et al
Employer: Grand Rapids Public Schools
Docket No: B81 85301 82424

COURT OF APPEALS HOLDING: In order to impose a school denial period ineligibility upon school district employees who have been given an assurance of employment for the upcoming school year, such assurance must be reasonable in light of the information upon which it was based.

FACTS: In March, 1981 in anticipation of severely strained resources, the employer sent layoff notices to 625 low seniority staff. Afterwards the economic situation worsened, but in June, 1981 letters of reasonable assurance were sent to 266 teachers which stated without explanation "it is anticipated that you will be offered a teacher position for the 1981-82 school year." In August, some, but not all, the claimants were sent another letter rescinding the earlier assurance of reemployment. Subsequently, the Board of Review held in favor of the claimants on the basis the employer did not have "sufficiently certain budgetary data to offer such assurance".

DECISION: Claimants did not receive reasonable assurance and are not subject to the school denial period.

RATIONALE: "Although the term 'reasonable assurance' does not require a formal written or oral agreement to rehire (Riekse v Grand Rapids Public Schools, 144 Mich App 790, 792; 376 NW2d 194 [1985]), Section 27(i)(1) explicitly states that the assurance must be reasonable. To determine whether the assurance was reasonable, the MESC must necessarily consider the information upon which it was based. The MESC is not required to accept on blind faith any assurance given by a school district to one of its employees. If this were so, the school district could unilaterally render Section 27(i)(1) meaningless and frustrate the underlying purpose of the Michigan Employment Security Act."

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Question of fact, Totality of circumstances

CITE AS: Lansing School District v Beard, unpublished per curiam Court of Appeals November 29, 1990 (No. 118334).

Appeal pending: No

Claimant: Dan F. Beard
Employer: Lansing School District
Docket No. B87-16460-107488

COURT OF APPEALS HOLDING: Whether there is reasonable assurance is a question of fact to be determined in light of the totality of the circumstances.

FACTS: The claimant was a vocational data processing teacher. Because he was not certified as a vocational education teacher, the claimant was subject to annual authorization. On May 5, 1987, the claimant received a letter requesting that he make plans for obtaining his temporary or permanent vocational educational certification. In this letter, the claimant was informed that all jobs held by teachers who were not vocationally certified by July 1, 1987, would be posted for other applicants. On May 22, 1987, the claimant received a memorandum stating that unless specifically notified to the contrary, he had reasonable assurance of employment for the following school year.

DECISION: The claimant was not ineligible under Section 27(i).

RATIONALE: The May 22, 1987, memorandum did not constitute adequate assurance as a matter of law. Whether there was reasonable assurance was a question of fact. The ambiguity contained in the May 22, 1987, memorandum and the existence of the May 5, 1987, memorandum indicated that the claimant had not received adequate assurance of continued employment sufficient to bar his claim for benefits.

7/99
11, 13: N/A

Section 27(i)

DENIAL PERIOD, Non-school work site, Academic term, Public library

CITE AS: Minick v Ann Arbor Public Schools, Washtenaw Circuit Court, No. 90-39906 AE (May 1, 1991).

Appeal pending: No

Claimant: Timothy Minick
Employer: Ann Arbor Public Schools
Docket No. B89-10215-113204W

COURT OF APPEALS HOLDING: A school district claimant may be subject to the school denial period even if employed at a non-school location if his or her employment is linked to the academic year.

FACTS: Claimant was employed as a "library community assistant" by the Ann Arbor Community Schools. He enforced rules of behavior at the Ann Arbor Public Library which was operated by the school district. His contract provided he would work a maximum of 191 days, from the start of the school year until its conclusion. On May 22, 1989, the claimant was informed his last day of service would be May 31, 1989, and that he would be re-employed in the fall with his first day to be determined. He returned to work on September 1, 1989.

Claimant asserted he should not be subject to the school denial period. He argued the denial period had been expanded into an area not contemplated by the legislature -- a public library system serving the public at large on a year-round basis. He further argued his services were in no way linked to the academic cycle. He contended Section 27(i) was intended to be applied to personnel whose services were linked to the academic year.

DECISION: The claimant was subject to the school denial period of the MES Act, Section 27(i).

RATIONALE: The court found a link existed between the claimant's job and the academic year. The record indicated the need for library security coincided with the library's use by students during the school year. The court also found that the claimant's job category fell within the provisions of Section 27(i)(2) and that he was given reasonable assurance as he was informed his job would again be available in the fall.

7/99
11, 13: B

Section 27(i)

DENIAL PERIOD, Economic terms, School bus driver

CITE AS: Thompson v Chippewa Valley School District, Macomb Circuit Court, No. 96-7631-AE (August 28, 1997).

Appeal pending: No

Claimant: Frances A. Thompson
Employer: Chippewa Valley School District
Docket No. B93-15538-131205

CIRCUIT COURT HOLDING: A claimant is ineligible under Section 27(i) where she has received reasonable assurance of re-employment, despite the fact the assigned employment included a 7% pay reduction.

FACTS: After a millage failure it was anticipated that bus drivers could expect a reduction of one hour to an hour and a half per day in the following year. Thereafter, the school system gave the claimant and other drivers a letter of assurance which indicated the employer believed it would re-employ them in positions similar to what they had in the prior academic year. Claimant asserted she would be experiencing a substantial reduction in hours. But claimant's hourly earnings were raised from $13.38 to $14.32. The net reduction would be 7%, from $501 to $465 weekly. There was no adverse impact on her fringe benefits.

DECISION: Claimant is ineligible under the school denial provisions of Section 27(i).

RATIONALE: Denial of benefits to a school district employee is authorized under Section 27(9) if she was reasonably assured of re-employment and the economic terms and conditions of employment in the new year were reasonably similar to those of the preceding year.

7/99
24, 16, d12: F

Section 27(i)

DENIAL PERIOD, Reasonable assurance, Multiple employers

CITE AS: Brannen v Grand Rapids Public Schools, Kent Circuit Court No. 95-5003-AE (June 14, 1996).

Appeal pending: No

Claimant: Malcolm E. Brannen
Employer: Grand Rapids Public Schools
Docket No. B92-30594-R01-124781W

CIRCUIT COURT HOLDING: Assurance of re-employment at 50% of the preceding years' earnings is not a reasonable assurance of re-employment.

FACTS: The claimant was employed concurrently by two educational institutions. One was the Grand Rapids Public Schools [GRPS]. The other was Grand Rapids Community College [GRCC]. Seventy percent (70%) of his total earnings were the result of his work with the GRPS. The remaining 30% were from GRCC. In July 1992 the claimant was informed his position with the GRPS was being eliminated. At the end of the 1991-1992 academic year GRCC informed him he had a "reasonable assurance" of re-employment in the fall of '92. However, his earnings would be reduced from $14,000 to $7,000 a year if he was not re-employed by the GRPS. The claimant filed a claim for benefits on July 2, 1992. On July 30, 1992 he was recalled by the GRPS. On August 12, 1992 he was offered [and later accepted] a position as a full-time employee of the GRCC at $14,000 per year.

DECISION: The claimant was not subject to the school denial period contained in Section 27(i).

RATIONALE: GRPS conceded that with respect to the GRPS there was no reasonable assurance of continued employment. However, the GRPS asserted claimant should not receive benefits for the period between academic years as he had received "reasonable assurance" from GRCC. The court found that the GRCC had only guaranteed re-employment at half his previous earnings. The court concluded that 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."

7/99
21, 16, d12: B

Section 27(o)

DENIAL PERIOD, Seasonal employment, Work beyond seasonal period

CITE AS: Bernabe v Cornerstone Ag Enterprises, Van Buren Circuit Court, No. 98-44-392-AE-B (September 14, 1998).

Appeal pending: No

Claimant: Ygnacio Bernabe
Employer: Cornerstone Ag Enterprises
Docket No. B98-01921-147951

CIRCUIT COURT HOLDING: An employee who works outside of the designated season is not ineligible for benefits by operation of the seasonal employment denial period set forth in Section 27(o) of the MES Act.

FACTS: The employer operates a blueberry farm. It applied for and received a seasonal employer designation relative to the period June 14 through September 27, 1997. The claimant worked for the employer ten [10] days longer than the season designated by the Unemployment Agency.

DECISION: The claimant was not ineligible under Section 27(o) and may collect benefits during the denial period if otherwise eligible.

RATIONALE: To be ineligible the employee must only receive wages during the season designated by the Agency. Here, the claimant received wages for ten [10] days beyond that period. Consequently, he does not fit the definition of a "seasonal worker."

7/99
24, 16, d23: k

Section 27(i)

DENIAL PERIOD, Layoff notice, Collective bargaining agreement

CITE AS: Hofmeister v Armada Area Schools, Macomb Circuit Court No. 96-3916AE (November 20, 1996) lv den Mich App No. 199806 (June 9, 1997).

Appeal pending: No

Claimant: Patricia Hofmeister
Employer: Armada Area Schools
Docket No. B93-00816-R01-131220

CIRCUIT COURT HOLDING: Notice of prospective tentative layoff does not negate reasonable assurance contained in collective bargaining agreement.

FACTS: Claimant was a school teacher during the 1991-1992 school year. Her employment was governed by a collective bargaining agreement. The school district was operating with a deficit. A millage election was scheduled for June 8, 1992. As a contingency, teacher layoffs were discussed and the union was so notified.

The June 8, 1992 millage increase failed. Another election was scheduled for September 14, 1992. On June 12, 1992 the school board sent a letter to the union that listed the claimant and others as employees who would be laid off if the millage again failed. On August 19, 1992, pursuant to the bargaining agreement, a letter was sent to the claimant notifying her she would be laid off on September 29, 1992 if the millage did not pass. But, the millage did pass and on September 15, 1992 the claimant and others were notified they were no longer subject to the possibility of layoff.

DECISION: The claimant was subject to the school denial period set forth in Section 27(i)(1).

RATIONALE: The claimant's employment was governed by a contract, the CBA. The CBA provided for employment until layoff notices were provided and became effective. Layoff notices were not provided until August 19, 1992. The claimant would not have been laid off until September 29, 1992. Thus, during the period for which claimant was seeking unemployment benefits she had a contract for the 1992-93 school year, which provided reasonable assurance. Consequently, she was not entitled to benefits.

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Section 27(i)

DENIAL PERIOD, Economic terms, Contract

CITE AS: Kentwood Schools v Marks, Kent Circuit Court, No. 99-02921-AE (April 7, 2000)

Appeal pending: No

Claimant: Esther D. Marks
Employer: Kentwood Schools
Docket No. B94-14964-134450W

CIRCUIT COURT HOLDING: Under Section 27(i)(1), whether the terms and conditions of claimant's employment are similar to previous work for the employer, is irrelevant to the issue of eligibility when a claimant has a contract in fact for the following school year.

FACTS: Claimant had been a paraprofessional reading instructor. Employer laid claimant off due to budget and personnel cutbacks. Claimant was able to bid on different positions, with equivalent pay, conditions and benefits. Given her seniority claimant was assured work in one of those positions if she wanted it. Instead claimant chose a non-instructional position with a significant decrease in hours and benefits. Claimant had a contract for employment for the following school year.

DECISION: Claimant is ineligible for benefits under 27(i).

RATIONALE: "Even where there exists a reasonable assurance of continued employment, benefits may not be denied unless the terms and conditions of such employment are reasonably similar to those of the previous year." Paynes v Detroit Board of Education, 150 Mich App 358 (1986). But, the existence of a contract negates any requirement for such similar terms and conditions. Paynes, supra, at 372, 373 and 378.

As the claimant had a contract for the following school term, the terms and conditions of claimant's new employment were irrelevant on the issue of eligibility. The benefit ineligibility provisions of Section 27(i)(1) apply where there is 1) an actual contract or work, or, 2) reasonable assurance of work under similar terms and conditions in an instructional, research or principal administrative capacity.

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