

CASE NO. A09-0672



STATE OF MINNESOTA
IN COURT OF APPEALS

DEAN HALVORSON, Relator,

v.

COUNTY OF ANOKA, Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RELATOR'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUE

1. Did the Commissioner's representative err as a matter of law by concluding that Mr. Halvorson was employed by an educational institution and was therefore ineligible for unemployment benefits during the summer?

The Department of Employment and Economic Development held in the negative.

2. Did the Commissioner's representative err when determining Mr. Halvorson's unemployment was in between academic years, and therefore, he was ineligible for unemployment benefits.

The Department of Employment and Economic Development held in the negative.

Apposite Statute:

Minn. Stat. § 268.085 (2008)

STATEMENT OF THE CASE

On May 7, 2008, informed Dean Halvorson that his summer school hours would be significantly reduced. (Record, Attachment #10). As a result of this action, he applied for unemployment benefits effective June 15, 2008. On October 29, 2008, the Department of Employment and Economic Development issued Mr. Halvorson a "Determination of Ineligibility." The Department held:

that the wage credits Halvorson earned from Anoka County were not usable for benefit payment purposes during the break between academic years or terms on the grounds that he performed services for an educational institution during the 2007-2008 academic year and had a reasonable assurance of performing services for an educational institution in the 2008-

2009 academic year under terms and conditions that are not substantially less favorable.

(See recitation in December 15, 2008 “Notice of Decision,” App. at 7). An evidentiary hearing was then conducted on December 4, 2008. On December 15, 2008, Unemployment Judge Katherine Karsh issued findings of fact and a decision on this matter, affirming the denial of benefits. On December 29, 2008, Mr. Halvorson filed a request for reconsideration asking the judge to reconsider that decision. Judge Karsh’s “Notice of Decision of the Request for Reconsideration” upholding her earlier decision was dated March 16, 2008, and sent March 17, 2008.

FACTS

Dean Halvorson has been an Anoka County employee for several years. He has been assigned to teach at the Pines School, which is the year-round educational component of the East Central Regional Juvenile Center (RJC), the Anoka County Juvenile Center (ACJC), and the Anoka County Non-Secure Program (NSP). (Record, “Statements for Eligibility Appeal for Dean Halvorson). Although the State and Anoka County argue here that RJC is an “education institution,” the Minnesota Department of Education (MDE) considers it an “approved private care and treatment residential facility.” (Record, Attachment #3). MDE also refers to the RJC as a “private” facility, and it defines its use of that term as indicating that the “education staff are not employees of a Minnesota school district or

cooperative.” Id. Job postings also make it clear that employees are hired into a corrections position. (See example “County of Anoka,” posting describing the arrangement as follows: “Pines School—a unit within the Anoka County Corrections Department.”; Record, Attachments #4 and #5).¹ “The purpose of the RJC is to protect the community while providing youth with opportunities to change. RJC is a maximum-security regional juvenile center for males and females 10 to 18 years old who have committed delinquent acts and have been sentenced.” (Record, Attachment #6).

Upon his initial application for unemployment insurance, Mr. Halvorson was determined to be eligible for benefits, but was later denied when Anoka County noted that other similarly situated employees had been denied.

SUMMARY OF ARGUMENT

Mr. Halvorson asserts to this Court that he is not covered by the unemployment exclusions applicable to employees of educational institutions. He is not employed by an educational institution. He is employed by Anoka County and assigned to an educational program (Pines School) in a corrections institution (RJC).

¹ Although the unemployment decision below states that Pine School is “licensed” by the Minnesota Department of Education (MDE), the testimony actually was that it is “approved” by MDE. (Transcript (hereinafter “T”) at 19) MDE does not treat RJC as a school or school district; it merely recognizes that RJC has an educational program within its care and treatment structure.

In the alternative, Mr. Halvorson argues that because the unique educational program provided to the juvenile offenders is temporary and year round, there is no “academic year,” and his period of unemployment was not between any academic years. Thus, he cannot be subject to any exclusion of benefits for the time period between academic years or terms.

ARGUMENT

Standard of Review

This court reviews issues of statutory construction de novo. Bukkuri v. Dep't of Employment & Econ. Dev., 729 N.W.2d 20, 21 (Minn.App. 2007). In Swanson, this Court specifically found that the interpretation of Minnesota Statutes § 268.085, subdivision 7 was “a question of law ‘upon which this court is free to exercise its independent judgment.’” Swanson v. Independent School Dist. No. 625, 484 N.W.2d 432, 434 (Minn.App. 1992), rev. denied, (Minn. June 30, 1992) (citations omitted). This Court is not bound by the Department’s statutory interpretation. Id. If the language of a statute is unambiguous, this court may not disregard the letter of the law under the pretext of pursuing its spirit. Id. (See Minn.Stat. § 645.16 (2008)).

In reviewing the decision of the unemployment law judge (ULJ):

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the

substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2008). Because the issues of the definitions of “educational institution” and “academic years or terms” are questions of statutory construction, the Court must examine any legal interpretations de novo to determine whether there were errors of law.

Introduction

This case centers around the interpretation of Minnesota Statutes § 268.085, subdivision 7, “School employees,” primarily, subsections (a) and (l), highlighted below:

(a) No wage credits in any amount from any employment with any educational institution or institutions earned in any capacity may be used for unemployment benefit purposes for any week during the period between two successive academic years or terms if:

- (1) the applicant had employment for any educational institution or institutions in the prior academic year or term; and
- (2) there is a reasonable assurance that the applicant will have employment for any educational institution or institutions in the following academic year or term, unless that subsequent employment is substantially less favorable than the employment of the prior academic year or term.

(e) Paragraph (a) applies to any vacation period or holiday recess if the applicant was employed immediately before the vacation period or holiday recess, and there is a reasonable assurance that the applicant will be employed immediately following the vacation period or holiday recess.

(f) This subdivision applies to employment with an educational service agency if the applicant performed the services at an educational institution or institutions. "Educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions. This subdivision also applies to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

(g) Paragraphs (a) and (e) apply beginning the Sunday of the week that there is a reasonable assurance of employment.

(h) Employment with multiple education institutions must be aggregated for purposes of application of this subdivision.

(i) If all of the applicant's employment with any educational institution or institutions during the prior academic year or term consisted of on-call employment, and the applicant has a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term, it is not considered substantially less favorable employment.

(j) Paragraph (a) also applies to the period between two regular but not successive terms.

(k) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

(l) An "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof, or an educational organization described in United

States Code, title 26, section 501(c)(3)² of the federal Internal Revenue Code, and exempt from income tax under section 501(a).

Minn. Stat. 268.085 (emphasis and footnote added).

I. Mr. Halvorson is employed by Anoka County, which is not an educational institution.

The proper inquiry here is not whether or not Mr. Halvorson is a teacher, but instead whether or not his employer is an “educational institution” under the unemployment statutes. The County attempts to focus on what Mr. Halvorson does; however, his job duties are not at issue here. The question before this Court is limited to determining the nature of his employer. The statutory exclusion from summer benefits only applies when the *employer* is an educational institution: “any employment with any educational institution or institutions.” Minn. Stat. § 268.085, subd. 7(a).

Anoka County is Mr. Halvorson’s employer, and the County is not an “educational institution.” Minnesota Statutes § 268.085, subdivision 7(I)

² Although the parties do not appear to be basing their arguments on the citation to federal law, given its requirements that the entity be operated exclusively for educational purposes, it is provided here:

(3) Corporations, and any community chest, fund, or foundation, organized and **operated exclusively** for religious, charitable, scientific, testing for public safety, literary, or **educational purposes**, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3) (2008) (emphasis added).

requires that the employing “educational institution” be an “educational entity.” Anoka County is not.

The Court reaches the same result if it looks at the East Central Regional Juvenile Center (RJC). It is not an “educational entity;” it is a corrections entity as described above. RJC operates the educational program of its care and treatment facility as the Pines School. However, it is not a separate educational entity and most importantly is not an employer. See Minnesota Statutes § 125A.515, subdivision 1 (2008)³, (requiring that the MDE Commissioner:

approve *education programs* for placement of children and youth in residential facilities including detention centers, before being licensed by the Department of Human Services or the Department of Corrections. *Education programs* in these facilities shall conform to state and federal education laws including the Individuals with Disabilities Education Act (IDEA). This section applies only to placements in facilities licensed by the Department of Human Services or the Department of Corrections.

(Emphasis added) and Minnesota Statutes § 125A.52, subdivision 2 (2008) allowing MDE’s Commissioner (in consultation with the Commissioners of Corrections and Human Services) to “make or amend rules relating to *education programs* in residential treatment facilities.” (Emphasis added).)

³ Judge Karsh made a couple of references to Minnesota Statutes § 268 125A.515 in her December 15, 2008, decision, but it appears that she was in fact referring to Minnesota Statutes § 125A.515.

This very issue has been addressed by a New York court. In examining a nonprofit entity with an educational component, the court found that this did not make the nonprofit an “educational institution.” In re Fernandez, 50 A.D.3d 1399, 1401 (N.Y.A.D. 3 Dept. Apr 24, 2008)⁴ The entity was not an educational institution merely because it offered “some services that are entirely educational in nature.” Id.

In addition, there is an educational institution that would be responsible for these students if they were not being served by the correctional facility. See Minnesota Statutes § 125A.515, subdivision 3(a) (2008): “The district in which the residential facility is located must provide education services, including special education if eligible, to all students placed in a facility.” The employer’s testimony underscores the difference between the Centennial School District (the resident district, which is clearly an educational institution) and RJC, a corrections institution. See also the employer’s testimony that the resident district (Centennial) would take over the educational operations of Pines School if it failed to provide a quality education. (T. at 21).

⁴ Under federal law, other state statutes have nearly identical language regarding eligibility of employees of educational institutions. See Maribeth Wilt-Seibert, Unemployment Compensation for Employees of Educational Institutions: How State Courts Have Created Variations on Federally Mandated Statutory Language 29 U. MICH. J. L. REF. 585, 586 (1996) (explaining that in 1970 Congress amended the “Federal Unemployment Tax Act of 1954 (FUTA) to require the states to pay unemployment compensation benefits to employees of educational institutions and educational service agencies when these employees met the FUTA’s criteria. Since 1970, in an effort to remain in conformity with the FUTA, each of the fifty states has enacted nearly identical versions of the federally mandated language ”)

The Anoka County employees doing work that would otherwise be done by school district employees. However, because they're employed by the County, they are not exempt from summer unemployment benefits as a school district employee would be.

Several courts have addressed this issue in the context of school crossing guards, employees doing work directly tied to the schools but not as school employees. An Ohio court held that a crossing guard employed by the city but placed at an educational institution, was not "employed by an educational institution." North Olmsted v. Ohio Bur. of Emp. Serv., 574 N.E.2d 1158, 1159-60 (Ohio App. 1989). Similarly, a Pennsylvania court found in favor of city-employed school crossing guards even though the city received a 50-percent reimbursement of their salaries. Pleasant Hills v. Commonwealth, Unemploy. Comp. Bd. of Rev., 440 A.2d 679, 681 (Pa. Cmwlth. 1982). The Wisconsin Supreme Court issued the clearest decision on this issue, detailing legislative history, and noting that the city-employed crossing guards in that case were also eligible for unemployment benefits, citing the federal legislative history discussing State-employed school lunch providers who were eligible for unemployment benefits: "The employees described would be employees of the State *working in but not for the educational institution.*" City of Milwaukee v. Dep't of Indus., Lab. and Human Rel., 316 N.W.2d 367, 371 (Wis. 1982) (emphasis added).

A Colorado court reached the same result for Headstart employees, a program that prepares preschool children for school; the key issue was not what the employees did, but rather identifying their employer. See Industrial Com. of Colo. v. Bd. of County Comm'rs, 690 P.2d 839, 847 (Colo. 1984) (noting federal policy requiring and upholding a statute providing that Headstart employees employed by the county were not disqualified from receiving unemployment benefits, even though Headstart workers employed by educational institutions were). Similarly, in Mr. Halvorson's case, the relevant analysis is who is the employer, not what work is being done.

II. Mr. Halvorson's work for the County in providing an education program is different than providing services for an educational institution.

As addressed above, the RJC is a correctional facility, which provides an *education program* (Pines School) to its offenders. Minnesota Statutes provide several rules related to this program, but in no place make it an "educational institution" that employs staff.

As an example of the differences between the program at issue here and the program of an educational institution, the education program at the Anoka County Juvenile Center does not grant diplomas to its students. Any diploma earned would come from the student's home school district.

(T. at 23, 41). Therefore, although it provides educational services, it is not an educational institution.

Lastly, although Mr. Halvorson is not challenging the denial of benefits on the ground that he has always been employed year round, he does point out to the Court that this unique situation is another reason why it is appropriate for him to collect benefits when a school district employee would not. He was truly unemployed during a portion of the summer of 2008, as opposed to simply being on a planned school closure as he would have been were he employed by a school district. (See Record at Attachment #11, letter from Brad Harper:

Dean Halvorson is going to see a substantial reduction in work hours and income over the next few months. This change was unforeseen. He received initial information about the change on April 14, 2008 with final confirmation occurring on May 7th. These changes are not within his ability to control or predict; they were imposed on school staff late in this school year. The total deficit Mr. Halvorson has unexpectedly incurred is approximately \$7,589.99.

See also Mogren v. Kan. Employ. Sec. Bd. of Rev., 801 P.2d 64, 66 (Kan. App. 1990) (noting: "The purpose of the disqualification statute is to protect state and federal unemployment compensation funds by distinguishing between teachers and school employees who are truly unemployed and those who have advance notice of seasonal layoffs and are not in the same economic situation as those finding themselves unpredictably out of work."). A Rhode Island court allowed benefits to

stand for school employees whose 52-week year was unilaterally altered to 190 days, noting:

Given that the employees had been employed for lengthy periods on a fifty-two week basis and that they were provided very little notice that they would not be employed during the summer months, we determine that the District Court judge did not err in affirming the decision of the board of review. Therefore, we conclude that the employees are entitled to unemployment benefits for this first summer. We do not, however, rule that the employees will be eligible for benefits in subsequent years if the restricted conditions of employment persist.

Woonsocket Sch. Comm. v. Dep't of Employ. and Training, 635 A.2d 266, 267 (R.I. 1993).

III. Because RJC has a transitory population, it does not have a traditional academic year, as that term is used in the statute.

Even if the Court were to find that Anoka County is an educational institution for unemployment purposes, the statute does not preclude benefits unless the employee is unemployed "between two successive academic years or terms." Minn. Stat. § 268.085, subd. 7(a). Although the school staff may talk about academic years as their counterparts in school districts do, RJC students do not have academic years. RJC provides services for detention and short-term placement. (Record, Attachment #6). Detention services are intended to provide "placement pending court or disposition." Id. There is also a 48-hour weekend

program and a 5-day to 60-day program. Id. Stated simply, no student is placed for an academic year.

In addition, Minnesota Statutes § 125A.515, subdivision 7 (2008) requires summer school services “for a student who is not performing at grade level as indicated in the education record or IEP.” These students will be attending school year round. (See also Record at Attachment #9, job posting: “Pines School in Lino Lakes – a year around school”).

Notably, a Michigan Appeals Court found that the staff in the adult basic education (ABE) program at issue there did not fall under the “academic year” preclusion because the length of the program was determined by budgetary constraints, and not by the amount of time needed to complete a particular course or grade. Wilkerson v. Jackson Public Schools, 427 N.W.2d 570, 572 (Mich.App. 1988). “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.” Id. The ABE program in Wilkerson is quite similar to the education program at RJC. Students are each at their own individual levels, and the program is not structured for them to change grades in the fall or to graduate in the spring. Therefore, even if Anoka County were found to be an educational institution, Mr. Halvorson would still be entitled to compensation based on the fact that his break did not come between “academic years or terms.”

CONCLUSION

For the foregoing reasons, Mr. Halvorson respectfully requests that based on the error of law, this Court reverse the judgment of the Department below.

Dated: July 13, 2009.

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