

No. A09-672

State of Minnesota
In Court of Appeals

DEAN H. HALVORSON,

Relator,

vs.

COUNTY OF ANOKA,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'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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Legal Issue

Under the law, a teacher who does not work during the time between terms or academic years, who has teaching work in the upcoming academic year, is not entitled to collect unemployment benefits based on the wage credits earned from his employment with an educational institution. Dean Halvorson taught full-time at the Pines School, an educational institution run by Anoka County and housed in a juvenile correction facility. Halvorson had previously taught year-round, but when dropping enrollment led the Pines School to shorten its summer session, Halvorson applied for unemployment benefits for those weeks when he did not work.

Can Halvorson use the wage credits earned at Pines School for unemployment benefits purposes for the summer of 2008?

The Unemployment Law Judge Katherine Karsh found that Halvorson was covered by the statute limiting teachers' ability to use wage credits earned at educational institutions, and was ineligible for unemployment benefits.

Statement of the Case

The question before this court is whether Dean H. Halvorson is entitled to unemployment benefits. Halvorson established a benefit account with the Minnesota Department of Employment and Economic Development (the "Department"). A Department adjudicator determined that Halvorson was ineligible for benefits because he could not use the wage credits earned from

working at the Pines School.¹ Halvorson appealed that determination, and Unemployment Law Judge (“ULJ”) Katherine Karsh held a de novo hearing. The ULJ affirmed.² Halvorson filed a request for reconsideration with the ULJ, who affirmed.³

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Halvorson under Minn. Stat. § 268.105, subd. 7(a) (2008) and Minn. R. Civ. App. P. 115.

Department’s Relationship to the Case

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁴ As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds, the employer not being the determiner of entitlement.⁵ This was later codified.⁶ The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the Minnesota Unemployment Insurance Law.

¹ E-1(1). Transcript references will be indicated “T”. Exhibits in the record will be “E” with the number following.

² Appendix to Department’s Brief, A5-A10.

³ Appendix A1-A4.

⁴ Minn. Stat. § 116J.401, subd. 1(18).

⁵ 545 N.W.2d 372, 376 (Minn. 1996).

⁶ Minn. Stat. § 268.069, subd. 2.

The Department is thus considered the primary responding party to any judicial action involving an Unemployment Law Judge's decision.⁷

The Department does not represent the applicant in this proceeding and this brief should not be considered advocacy for Anoka County. The argument set out below is limited to a response to the arguments raised by Halvorson. As the Supreme Court made clear in *Melina v. Chaplin*, issues not briefed on appeal are waived.⁸

Statement of Facts

The facts in this case are largely undisputed. The Pines School is a school housed at the Juvenile Center in Lino Lakes.⁹ The Juvenile Center is designed to house children between the ages of 10 and 18; Pines School is designed to provide education for Juvenile Center residents in grades 6 through 12, although most of the residents at the Center are in grades 9-12.¹⁰ Pines School is operated by Anoka County, and Anoka County is Halvorson's employer.¹¹

Juveniles who have been adjudicated delinquent serve their sentences, earn credit for attending school at Pines School, and are able to transfer those credits to their home districts in the same way that they could from any other school.¹²

⁷ Minn. Stat. § 268.105, subd. 7(e).

⁸ 327 N.W.2d 19, 20 (Minn. 1982).

⁹ T. 18-19.

¹⁰ T. 24.

¹¹ T. 8, 42.

¹² T. 20.

Upon their release, no student has ever been unable to transfer the full number of credits they earned at Pines School to their home districts.¹³ Students who graduate from high school while still serving their sentences will receive a diploma from their home district, although Pines School is close to being able to grant those diplomas on its own.¹⁴ The Pines School is staffed by teachers licensed by the State of Minnesota, and the school is subject to state education requirements.¹⁵

Dean Halvorson is a full-time physical education teacher at the Pines School.¹⁶ Halvorson has been employed at Pines School since August 25, 1997, and has taught math in addition to physical education.¹⁷ The 2007-08 school year ran from August 27, 2007, through June 16, 2008, and during that time Halvorson was paid \$44.71 an hour, and worked 37.5 hours a week.¹⁸

Prior to the 2007-08 school year, Halvorson worked 12 months a year for the school, which operated a summer session.¹⁹ While the Pines School had always operated a summer session, the session's ongoing existence was dependent on enrollment; enrollment drops during the summer, because the Pines School does not operate its normal day program, and often drops further because the

¹³ T. 21.

¹⁴ T. 22-23.

¹⁵ T. 21.

¹⁶ T. 23.

¹⁷ T. 25.

¹⁸ T. 17-18, 26-28.

¹⁹ T. 30-31.

number of students eligible for summer school varies by year.²⁰ Pines School did not operate classrooms with fewer than six enrolled students.²¹ Approximately three years ago, Pines School stopped offering physical education during the summer, and during the subsequent summers Halvorson worked as a Title I mathematics tutor.²²

As a result of decreased enrollment during the summer of 2007, summer school ran from Monday through Thursday, instead of the Monday through Friday schedule held during the academic year.²³ The summer session started one week after the end of the regular school year, and ended during the third week of August, one week before workshop week.²⁴ In 2008, the summer session lasted for only six weeks, and teachers worked only four-and-a-half hour days.²⁵ Halvorson's last day of employment was July 31.²⁶ Pines School expects that the summer schedule will be similar for the 2009 summer school.²⁷

Pines School teachers returned to work on Monday, August 25, for the 2008-09 school year.²⁸ As of the date of the hearing, Halvorson was expected to

²⁰ T. 31.

²¹ T. 31.

²² T. 31-32.

²³ T. 32.

²⁴ T. 32-33.

²⁵ T. 38.

²⁶ T. 55.

²⁷ T. 38.

²⁸ T. 29.

work the same hours, for the same pay, that he worked during the 2007-08 year.²⁹

As always, he is not guaranteed any hours for the 2009 summer session.³⁰

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Halvorson's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.³¹

The Court of Appeals held in *Skarhus v. Davannis* that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.³² It views the ULJ's factual findings "in the light most favorable to the decision,"³³ and gives deference to the ULJ's credibility determinations.³⁴ The Court of Appeals also held in *Swanson v. Independent School Dist. No. 625* that the

²⁹ T. 37.

³⁰ T. 46.

³¹ Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2008).

³² 721 N.W.2d 340, 344 (Minn. App. 2006) (citing Minn. Stat. §268.105, subd. 7(d)).

³³ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

³⁴ *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), review denied (Minn. Dec. 20, 2000)).

interpretation of Minn. Stat. § 268.08, subd. 6(a)&(b) - the precursor to Minn. Stat. § 268.085, subd. 7, is a matter of law.³⁵

Argument for Ineligibility

A teacher who does not work during the time between terms or academic years is not entitled to count the wage credits earned from their employment with an educational institution. Thus, most teachers are unable to collect unemployment during summer breaks, as they do not have wage credits from a non-educational employer.

Minn. Stat. § 268.085, subd. 7 provides:

(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.

³⁵ 484 N.W.2d 432, 434 (Minn. App. 1992).

* * *

(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) of the federal Internal Revenue Code, and exempt from income tax under section 501(a).

In *Vargas v. Northwest Area Foundation*, the Court of Appeals, citing a number of statutory provisions, held that an individual's eligibility for unemployment benefits is determined based upon the available evidence without regard to any burden of proof.³⁶

1. **Halvorson is employed at an educational institution operated by a political subdivision of the State of Minnesota.**

Minn. Stat. 268.085, subd. 7(a) limits the ability of teachers to use wage credits earned "from any employment with any educational institution or institutions." Under the statute, subd. 7(1), an "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof. Pines School is operated by Anoka County, a political subdivision of the State of Minnesota, and is an educational institution under the statute.

Relator's brief bizarrely argues that Halvorson is not employed by an educational institution because "Anoka County is Mr. Halvorson's employer, and

³⁶ 673 N.W. 2d 200 (Minn. App. 2004).

the County is not an 'educational institution.'"³⁷ The brief expounds that Pines School teachers are employed by the County, and are therefore "not exempt from summer unemployment benefits as a school district employee would be."³⁸ It further declares that Pines School is not an educational entity, but rather an "education program" under Minn. Stat. § 125.52, subd. 2.³⁹

This is simply not true. Minnesota law is clear that schools operated within juvenile correctional facilities are educational entities. Minn. Stat. § 124D.96 states that:

Before July 1 of each year, each welfare and correctional institution which offers an elementary, secondary or vocational educational program shall develop a written policy for its educational program for the next school year. The institutional policy shall specify the educational goals for the institution; instructional plans for implementing these goals; estimated number and grade level of students; number of licensed educational staff; areas of licensure; student to staff ratios; number of supervisory personnel; proposed educational budget; procedures for evaluation of the program; and any other information deemed necessary by the commissioner of education for the evaluation of the **educational institutions**. The institutions shall submit the policy to the commissioner of education who will review the policy to determine whether the program and personnel employed in the program are adequate to meet the institution's obligation to provide instruction and services in compliance with the Department of Education rules and standards. If necessary, the commissioner shall make recommendations to the institution for changes in its educational program. (Emphasis added).

³⁷ Relator's brief, p. 7.

³⁸ Relator's brief, p. 10.

³⁹ Relator's brief, p. 8.

Not only does Minnesota law explicitly refer to educational programs within juvenile correctional facilities as “educational institutions,” it also lays out the process by which the Department of Education reviews the institution’s educational program and personnel. It is also subject to state laws regulating education, including discrimination in education; one such statute, Minn. Stat. § 363A.13, specifically addresses its terms to “educational institutions.”

Relator’s brief makes much of the fact that the educational programs in educational institutions housed in juvenile detention centers are regulated by the Department of Education, the Department of Corrections, and the Department of Human Services.⁴⁰ This may very well be, but that does nothing to alter the plain fact that under Minnesota law the Pines School is an educational institution that offers educational programs. This makes sense. Like other educational institutions, Pines School offers educational programs to children between the ages of 10 and 18, and grants credit for courses that the children take.

The fact that Anoka County operates the educational institution also does nothing to alter its status as an institution. To fall under the statute, the educational institution must be operated by the State of Minnesota, a political subdivision, or an instrumentality thereof. Minn. Stat. § 3.986, subd. 4 defines “political subdivision” as “a school district, county, or home rule charter or statutory city.” Anoka County is identically situated to any school district for

⁴⁰ Relator’s brief, p. 8.

purposes of the matter at hand.

In Minnesota, many schools are run by entities other than school districts. The Perpich Center for Arts Education is controlled and managed by a board appointed by the governor pursuant to Minn. Stat. § 129C.10 *et seq.*, for example, and under Minn. Stat. § 128B.011 the Pine Point School is managed and controlled by the White Earth Reservation Tribal Council. Pursuant to Minn. Stat. § 135A.01, the state legislature funds a substantial portion of the operating costs of the University of Minnesota and Minnesota State Colleges and Universities. Charter schools have generated their own governing legislation, in Minn. Stat. § 124D.10 *et seq.* Pines School is certainly not unique, and Minnesota unemployment insurance law is written broadly, to encompass all of these educational institutions.

Rather than apply Minnesota law, Relator's brief undertakes a tortured analysis of other state laws, comparing Halvorson to school crossing guards in Ohio and Pennsylvania, school lunch providers in Wisconsin, and Headstart employees in Colorado. While it is obviously tempting to turn to the laws of other states when faced with unfavorable Minnesota law, these comparisons are simply not apt. As a preliminary matter, they have no binding authority over Minnesota courts, and Relator does not argue that they do. Moreover, none support the proposition that employees at educational institutions operated by a county would be eligible for unemployment benefits. In *North Olmsted v. Ohio Bur. of Emp.*

Serv., 574 N.E.2d 1158 (Ohio App. 1989), for example, the school crossing guard was employed by the city's police department, which obviously operated no educational institutions, and was stationed at a school operated by a school district. In *Borough of Pleasant Hills v. Com., Unemployment Compensation Bd.*, 440 A.2d 679 (Pa. Cmwlth. 1982), the school crossing guards were employed by the Borough, and not the school district that operated the school where they were stationed, and were therefore eligible for benefits during the month that the teacher's strike left them unable to work. In *City of Milwaukee v. Department of Industry, Labor and Human Relations*, 316 N.W.2d 367 (Wis. 1982), the crossing guards were once again employees of the city, and not of the political subdivision operating the education institution. The Colorado case is uninformative, as the state's definition of educational institution in 1984 was much narrower than Minnesota's is today. In *Industrial Com'n of State of Colo. v. Board of County Com'rs of Adams County*, 690 P.2d 839, 846 (Colo. 1984), the court clarified that Colorado law did not consider Headstart Programs to be "educational institutions" unless they were "part of a school administered by a board of education." This is at odds with Minnesota law, which recognizes educational institutions operated by any political subdivision in the state.

In all of these cases, the employees were employed by one entity, and either stationed at an educational institution operated by another, or not stationed at an educational institution at all. That is not the case in the matter before us. Anoka County operated the Pines School and employed Halvorson directly. He was not,

for example, employed by a city's police department while stationed at the school – he was employed directly by the entity operating the educational institution. If the crossing guards had been employed by the entity operating the educational institutions – in these cases, by the respective school districts – the crossing guards would similarly be ineligible for benefits. Finally, Minnesota law would render most, if not all, of the applicants in these cases ineligible for benefits. Minnesota law specifically applies the wage credit exclusion to those employed by a political subdivision who provide services to or on behalf of an education institution, which would likely exclude school crossing guards hired by a city solely to provide services to an educational institution.⁴¹ The cases in relator's brief simply do not apply to the matter at hand.

2. The nature of the Pines School does not remove it from the category of educational institutions.

Relator's brief argues that Pines School is not an educational institution because it does not grant diplomas to its students.⁴² It further argues that Pines School students "do not have academic years," because the students there receive a "short-term placement."⁴³ Nowhere in Minnesota Statutes are educational institutions described only as those that grant diplomas, or those that have student populations that do not turn over during the year. Many institutions, from

⁴¹ Minn. Stat. § 268.085, subd. 7(f).

⁴² Relator's brief, p. 11.

⁴³ T. 13.

elementary schools through colleges, do not award diplomas; Minn. Stat. § 136F.32, for example, allows Minnesota State Colleges and Universities educational institutions to offer degrees, diplomas, and certificates. Similarly, many schools have transient student populations, including those that serve at-risk populations like homeless children and pregnant students. Pines School is regulated by the State of Minnesota, and offers classes for credit taught by licensed teachers. There is simply no reason why this would not be an educational institution.

To support its assertion, Relator's brief cites a New York state case addressing a nonprofit entity with an education component. Relator cites *In re Fernandez* for the proposition that an entity is not an education institution merely because it offers some educational services.⁴⁴ Relator distorts the court's holding in the case. Even a cursory reading shows that *Fernandez* involved a nonprofit organization that was essentially a day care center: it offered no classes, no credit, and no curriculum that could remotely be described as educational. Pines School offers courses that allow the students to earn credit toward their high school diploma. It is, by every available measure, an educational institution.

⁴⁴ Relator's brief, p. 9, citing 50 A.D.3d 1399 (N.Y.A.D. 3 Dept. Apr. 24, 2008).

3. **The fact that Halvorson had previously been employed during the summer does not exempt him from the statute denying benefits between terms, nor does it prevent it Pines School from having “academic years.”**

Relator argues that Pines School was a year-round school, and thus had no vacation or break between terms. In fact, Pines School was like most other educational institution in Minnesota in this regard: it offered summer school when enrollment and statute demanded it and when budgets allowed it. The fact that Pines School has offered, and continues to offer, some summer sessions does not somehow transform it into a year-round school. The testimony from the employer during the hearing was clear: the summer school was distinct from the year-round program, marked by a 4-day week and a much smaller enrollment. Enrollment was so small, in fact, that during the past few years Halvorson was employed as a tutor, and not as a teacher, during the summer.

While Relator’s brief argues that Pines School is a year-round school because it is required, under Minn. Stat. § 125A.515, subd. 7, to offer summer school services to certain students,⁴⁵ this has no bearing on the matter at hand. The brief paraphrases the requirement in an attempt to differentiate the requirements placed on Pines School from those borne by other educational

⁴⁵ Relator’s brief, p. 14.

institutions. In fact, the obligations are the same. An educational institution must provide necessary education to certain special education students, including “a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers, requires an alteration in the length of the school day.”⁴⁶

Many educational institutions take advantage of Minn. Stat. § 125A.50, which allows districts to establish educational programs in area learning centers, and to provide “services during extended school days and throughout the entire year.” Minn. Stat. § 126C.15 similarly allows extended day and extended school year. Indeed, Relator’s brief doesn’t give a single example of a political subdivision operating educational institutions that doesn’t offer some form of extended year instruction. This does not change the fact that the summer term at Pines School was distinct from the rest of the academic year, and Halvorson was never guaranteed employment during the summer months.

Relator’s brief bewilderingly insists that Pines School has no academic years or terms, despite the testimony of all involved that the Pines School held its regular academic year from late August through early June, and its summer term for some period of time from early June through late August. If the court were to adopt Relator’s position, then every teacher who teaches at a school offering

⁴⁶ Relator’s brief, p. 14.

summer school classes would be eligible for unemployment benefits during the summer months. Relator proposes an exception that would swallow the rule, and one that is not contemplated by the statute.

Relator's brief also argues that Halvorson is entitled to benefits because he did not receive much advance notice of the newly-shortened summer term. Relator argues that this meant that he was "truly unemployed" during the summer of 2008, whereas he would have been on a "planned school closure" if he were employed by a school district.⁴⁷ Relator's brief cites a Kansas case for the proposition that teachers are entitled to unemployment benefits unless they receive "advance notice of seasonal layoffs," and a Rhode Island case for the proposition that teachers are entitled to benefits when they receive "very little notice" of their pending unemployment.⁴⁸

While Relator's brief demonstrates fluency in the laws of other states, it ignores the seminal case in Minnesota: *Swanson v. Independent School Dist. No. 625*. The fact pattern in *Swanson* is almost identical to the case at hand. There, an educational assistant in a year-round adult education program received a layoff notice, apparently without advance warning, notifying her that she would be laid off for approximately three weeks during the summer.⁴⁹ She resumed her

⁴⁷ Relator's brief, p. 12.

⁴⁸ Relator's brief, p. 12-13.

⁴⁹ 484 N.W.2d 432, 433 (Minn. App. 1992).

employment after that three-week break, but sought unemployment benefits for that time period.⁵⁰

The court considered the question of whether Swanson was eligible for benefits, and confirmed that the school's prior practice of offering school year-round did not matter. The court held that "the statute plainly states that a school employee is ineligible to receive unemployment benefits for any week which commences during a period between two successive academic years if the employee has received a reasonable assurance of reemployment in the upcoming year."⁵¹ Paying no heed to the fact that Swanson did not receive any lengthy notice of her impending layoff, the court held that "Swanson was ineligible to receive unemployment benefits after she had received a reasonable assurance of reemployment in the upcoming academic year."⁵²

Halvorson is like Swanson in every way. Like Swanson, he had previously worked for almost the full calendar year, and like Swanson, his summer hours were reduced. Halvorson received notice that his hours would be reduced approximately two months in advance. However, the court's decision is also clear that Halvorson would not have been entitled to unemployment benefits even if he had received no advance notice, and even if his summer hours were eliminated, rather than just reduced. Halvorson was entitled to full employment during Pines

⁵⁰ *Id.*

⁵¹ *Id.* at 434

⁵² *Id.*

School's nine-month academic term, but he was not entitled to work over and above that amount, nor to receive unemployment benefits if the summer work that he previously enjoyed was reduced or eliminated. Halvorson is simply not entitled to any unemployment benefits for any portion of the summer term.

The courts have not strayed from that holding. In *Johnson v. Independent School Dist. No. 535*, the court again confirmed that "school teachers are ineligible for unemployment benefits between consecutive academic years when they have received reasonable written assurance of reemployment in the second year under terms that approximate or approach those of the first year."⁵³

Most recently, in *Carlson v. Upsala Public Schools*, the court confirmed that *Swanson* is still good law, that former year-round school employees are ineligible for unemployment benefits between academic terms, and that "the relevant time frame in analyzing whether a school employee's subsequent employment is substantially less favorable is the prior academic year, not the prior calendar year."⁵⁴

Halvorson agrees that he is working the same hours, for the same pay, during the 2008-09 academic year that he earned during the academic year prior. At no point did Halvorson lack a reasonable assurance that he would not be

⁵³ 291 N.W.2d 699, 701 (Minn. 1980).

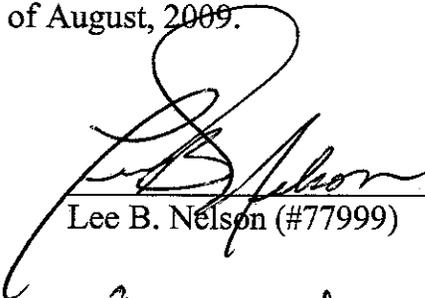
⁵⁴ 2008 WL 5215952, at *3 (Minn. App. Dec. 16, 2008).

rehired, and indeed he worked during the Pines School summer term. Halvorson is a teacher employed by an academic institution, and fully falls under the exclusions laid out in Minn. Stat. § 268.085, subd. 7.

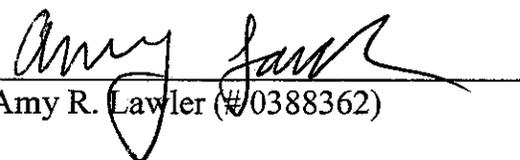
Conclusion

Unemployment Law Judge Katherine Karsh correctly concluded that Halvorson could not use the wage credits earned for his employment at an educational institution in his application for unemployment benefits between terms. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

Dated this 17th day of August, 2009.



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