

**STATE OF WISCONSIN : CIRCUIT COURT BRANCH I : OUTAGAMIE COUNTY**

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**THOMAS J. WITCZAK,**

**Plaintiff,**

**-vs-**

**DECISION**  
Case No. 98 CV 284

**LABOR AND INDUSTRY REVIEW  
COMMISSION and LAKESHORE  
TECHNICAL COLLEGE DISTRICT,**

**Defendants.**

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**PROCEDURAL HISTORY**

Plaintiff initiated this action to obtain judicial review of a decision by the Labor and Industry Review Commission (LIRC), denying plaintiff unemployment compensation.

Plaintiff has worked for Lakeshore Technical College (Lakeshore) for approximately 13 years. During this time Plaintiff worked as an instructor/coordinator in the police science program. Although a typical faculty contract requires services for 36 weeks, the contracts between Lakeshore and Plaintiff required his services for a period of 42 weeks.

On March 14, 1997 Plaintiff signed a contract for the 1997-1998 school year. Unlike previous years, this contract was for the standard 36 week period. Due to the 6 week reduction in the length of Plaintiff's employment, his salary was reduced from \$57,887 to \$49,989 per year. The academic school year ended on May 19, 1997 and Plaintiff filed a claim for unemployment compensation on June 17, 1997.

On July 2, 1997 a deputy for the Department of Workforce Development determined that Plaintiff was not a school year employe under the 1996-1997

App. 1983); or if it is inconsistent with the legislative intent, *State ex. Rel Irany v. Milwaukee Co.*, 118 Wis. 2d 132, 136 (1962).

Both parties agree that courts may afford different levels of deference to decisions and interpretation made by administrative agencies. Wis. Stat. § 108.09(6) clearly gives the responsibility for making final administrative decisions as to unemployment benefits to the LIRC. This court agrees with Defendants, that because the decision making authority has been specifically granted to the LIRC by statute, this court should give the agency's interpretations great deference.

Under this standard, an agency's interpretation will be sustained if it is merely reasonable. *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650 (1995). The court must affirm any reasonable interpretation, even if other interpretations are equally reasonable. *Id.* The Wisconsin Supreme Court in *Harnischfeger* held that an interpretation is unreasonable if it is in direct conflict with the words of the statute, if it is contrary to the legislative intent or if it is without a rational basis. *Id.* at 661.

### **DISCUSSION**

#### I. Wis. Stat. § 108.02(22m)

Both parties agree that the first step in determining whether Plaintiff is eligible to receive unemployment benefits is to determine whether Plaintiff was a school year employe at the time in question. Under § 108.02(22m) a school year employe is defined as:

... an employe of an educational institution or an educational service agency, or an employe of a government unit or nonprofit organization which provides services to or on behalf of an

educational institution, who performs services under an employment contract which does not require the performance of services on a year-round basis.

It is undisputed that Plaintiff's contract required his services for 42 weeks out of the year. Although Plaintiff may not have had the standard 36 week contract given to a typical school year employe, Plaintiff's services were not required on a year-round basis. Given the definition of a school year employe and the fact the Plaintiff's contract was for only 42 weeks, this court cannot say that the LIRC's determination that Plaintiff was a school year employe is without a rational basis.

II. Wis. Stat. § 108.04(17)(a)1.

The relevant part of this statute states the school year employees are ineligible to receive unemployment benefits between two successive academic years if, “. . . there is reasonable assurance that he or she will perform such services for an educational institution in the 2<sup>nd</sup> year or term.” Wis. Stats. Because the deputy and administrative law judge concluded that Plaintiff was not a school year employe, this issues was not addressed prior to the LIRC's review.

Both parties cite *Leissring v. DILHR*, 115 Wis. 2d 475 (1983) as controlling. In *Leissring* the Supreme Court of Wisconsin ruled that the reasonable assurance standard could not be met by any offer of employment. Plaintiff asserts that any offer must be an offer of substantially similar employment. The *Leissring* court held, however, that “reasonable assurance” is met if the “terms and conditions for the following year are reasonably similar . . . .” *Id.* at 489. Following the *Leissring* decision the LIRC has determined that an offer of at least

80% of the job performed in the prior academic year would be deemed reasonably similar. This standard was promulgated as a rule by the Department of Workforce Development. See Wis. Adm. Code § DWD 132.04 (June 1997). In examining Plaintiff's case, the LIRC calculated that contract for the 1997-1998 school year was 85.7 percent of the previous years contract in terms of duration, and 86.3 percent in terms of salary. With these calculations in hand, the LIRC determined that the offer of employment for the 1997-1998 school year was reasonably similar to the previous contract. This court cannot say that LIRC's determination that Plaintiff was reasonably assured of obtaining similar employment is without a rational basis.

**CONCLUSION**

For the reasons set forth above, this court cannot say that the determination by the LIRC denying Plaintiff's eligibility to receive unemployment benefits was without a rational basis or that it was unreasonable or erroneous. Therefore, the decision of the LIRC is hereby AFFIRMED.

IT IS SO ORDERED.

Dated at Appleton, Wisconsin this 20<sup>th</sup> day of October, 1998.

BY THE COURT:



HONORABLE JAMES T. BAYOR  
CIRCUIT COURT JUDGE, BRANCH I  
OUTAGAMIE COUNTY