IN THE SUPREME COURT OF FLORIDA

GULF COUNTY SCHOOL BOARD,

PETITIONER,

V.

ERNEST S. WASHINGTON, ET AL.,

RESPONDENTS.

CASE NO. 74,339

DCA CASE NO. 88-1783

BRIEF OF AMICI CURIAE,
FLORIDA SCHOOL BOARDS ASSOCIATION,
AND
FLORIDA ASSOCIATION OF SCHOOL ADMINISTRATORS
IN SUPPORT OF APPELLANT,
GULF COUNTY SCHOOL BOARD

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES

STATEMENT OF THE CASE AND FACTS

Amici Curiae incorporate herein by reference the STATEMENT OF THE CASE AND FACTS contained in the Brief of Appellant, GULF COUNTY SCHOOL BOARD.

INTEREST OF AMICI CURIAE

Amicus, FLORIDA SCHOOL BOARDS ASSOCIATION, INC., is a non-profit association which represents all sixty-seven district school boards before governmental bodies. Its membership is comprised totally of all elected school board members throughout the State of Florida. All such board members are members of the Association.

Amicus, FLORIDA ASSOCIATION OF SCHOOL ADMINISTRATORS, is a non-profit association which represents district school superintendents and administrators of all sixty-seven school districts in the State of Florida before governmental bodies.

The members of both associations are vitally interested in this case since an adverse ruling could cost the school districts untold thousands of dollars in premium payments and, if not reversed by this Court, will create a severe question as to the advisability of hiring non-certified teachers pending examination.

SUMMARY OF ARGUMENT

Amici assert that the case appealed from is not only in conflict with Florida Sheriffs Youth Fund v. Department of Labor and Employment Sec., 436 So.2d 332(Fla.2d DCA 1983), but with an entire line of cases of recent years in every District Court of Appeal throughout the State of Florida.

The First District Court of Appeal has added a new dimension to the already too liberally construed unemployment compensation statutes - its finding that "good faith effort" to the exclusion of other necessary considerations as set down in numerous cases interpreting the same statute. Amici do not believe it was the legislative intent that someone could merely attempt and thus fail to meet a prerequisite of employment and qualify for unemployment benefits after a necessary dismissal from employment without good cause attributable to his employer. One cannot receive unemployment benefits from a position for which he is not qualified.

ARGUMENT

I

THE DISTRICT COURT ERRED IN ITS FINDING THAT AN EMPLOYEE'S GOOD-FAITH EFFORT TO MEET PREREQUISITES OF HIS JOB REQUIREMENTS IS A FACTOR TO BE CONSIDERED IN AWARDING UNEMPLOYMENT COMPENSATION.

A thorough search by Amici of statutory and case law as well as any legal treatise failed to reveal any basis for the Court's finding that, because the claimant attempted to pass a required exam for teaching certification on several occasions and failed each time, he had made a "good-faith" effort sufficient to overcome a job requirement that he must possess such certification.

It is undisputed that Section 231.17(2)(a), Florida Statutes, requires, as a prerequisite to a contract to teach in Florida schools, that one must successfully take and pass an examination which reflects the examinee's fitness academically to teach. The only exception to this requirement is sub-sections 231.17(2)(d)(e) Florida Statutes (1985) which affords a candidate for examination a temporary teaching certificate which may be renewed two additional years after the initial year. There is no provision for an extension of these periods for someone who is making a "good-faith effort" to sit for the examination again. Claimant was fully aware that he must pass the examination if he was to continue to be employed by the SCHOOL BOARD. Claimant had no reasonable assurance of employment for the

successive academic year, since he failed the Teacher Certification Exam and his temporary certificate had expired. School Board of Lee County v. Florida Unemployment Appeals Commission, 500 So.2d 253(1 DCA 1986) at Page 241.

An employee of Prison Rehabilitative Industries and Diversified Enterprises (PRIDE) was required to enter a state prison to perform his duties as a supervisor of the tire recapping plant inside the prison. Prison officials suspected the employee of improper conduct and refused to let him enter. He made numerous attempts to be admitted so that he could perform his duties for PRIDE but to no avail. PRIDE, his employer, dismissed him.

It is obvious that the claimant made a "good faith effort" to get inside the prison to work by appearing at the gate on several occasions but the Court found he was not eligible for unemployment benefits because he was dismissed "without any fault of his employer". Prison Rehabilitative Industries and Diversified Enterprises v. Unemployment Appeals Commission, 476 So.2d 1309(2 DCA 1985).

Employers are often required to dismiss their employees who fail to meet certain prerequisites of employment and the employers are not required to be assessed unemployment compensation premiums.

Roges Adain was a Haitian alien who was granted a work permit by the Immigration and Naturalization Service (INS). He obtained a job and was working legally in Florida. Later

the INS illegally revoked his work permit which was a requirement of his employment.

Unemployment compensation was denied and the Court discussed the history of Section 443.101(1)(a), Florida Statutes in light of the Legislature's intent stating:

> Appellant would have us read section 443.101(1)(a) in such a way as to totally ignore the language "without good cause attributable to the employer" if we find that Adain did not leave his job voluntarily. However, basing our decision on the unambiguous legislative history of this statute, as well as on a number of cases which have applied its terms, we are required to hold that section 443.101(1)(a) disqualifies Adain from receiving unemployment compensation.
>
> The history of this section is quite clear in portraying the legislature's intent in passing the law. Prior to 1963, the law did not require the employee to show that he left his work for a good cause attributable to the employer. The employee needed only to show that he was voluntarily leaving for a good reason. Under that version of the statute, for example, this court interpreted good cause to include familial obligations. Yordamlis v. Florida Indus. Comm'n, 158 So.2d 791 (Fla. 3d DCA 1963); Williams v. Florida Indus. Comm'n, 135 So.2d 435 (Fla. 3d DCA 1961). However, in 1963, the legislature amended the law, then section 443.06(1), to require that good cause for voluntary termination to be "attributable to the employer." See Ch. 63-327, sec. 1, Laws of Fla. Clearly then, by this change the legislature intended to narrow eligibility for unemployment compensation. See Beard v. State, Dep't of Commerce, Div. of Employment Sec., 369 So.2d 382 (Fla. 2d DCA 1979).

The Court pointed out that in all the several cases it cited in its opinion, including the Lee case, supra, the claimants could "convincingly argue that there was nothing voluntary about their leaving; each was compelled to leave

for a very good reason. Nevertheless, all were denied benefits." (at 177).

The Court then discussed how this could happen: in that it could be inferred "voluntary", as used in the statute, the word "has a precise legal meaning." "Within the statute, it functions as a preliminary test to determine whether the employee "[became] unable to meet a known, understood, and accepted condition of employment." Florida Sheriffs Youth Fund, 436 So.2d at 334. The Court having determined this to be the first of a two part test then discussed the second part: Did [Adain] then become unable to meet the conditions of employment due to some act of the employer? In applying the facts of Adain's case, ie, he had lost his INS work permit, the Court found that, although stating "this was an excellent reason for leaving, his departure was not caused by his employer".

In finding that Adain did not qualify for unemployment benefits the Court closed by stating:

> We realize the harsh consequences which may sometimes result when unemployment benefits are denied to claimants who had compelling reasons for leaving their jobs. We are also aware that the declared public policy behind the Unemployment Compensation Act is to protect against "[e]conomic insecurity due to unemployment" and the resulting "serious menace to the health, morals, and welfare of the people of this state." sec. 443.021, Fla.Stat. (1985). Nonetheless, we must ascribe to words within a statute their ordinary meaning. Beard, 369 So.2d at 385; Florida Gulf Health Sys. Agency, Inc. v. Commission on Ethics, 354 S00.2d 932 (Fla. 2d DCA 1978). And, while the unemployment compensation statute is remedial and thus to be construed liberally, sec. 443.031,

> Fla.Stat. (1985), we cannot construe it so liberally as to reach a result contrary to the clear intent of the legislature. See Stern v. Miller, 348 So.2d 303, 308 (Fla.1977).

A review of all the cases cited in this case reveals not even a trace of "good faith effort" by a claimant as a basis for allowing benefits. Adain v. Unemployment Appeals Commission, 523 So.2d 175 (Fla. 3 DCA 1988).

II

WHERE THERE IS A KNOWN REQUIREMENT FOR EMPLOYMENT AND AN EMPLOYEE FAILS TO MEET THAT REQUIREMENT THROUGH NO FAULT OF HIS EMPLOYER, UNEMPLOYMENT COMPENSATION MUST BE DENIED.

In every case cited by the Order appealed from, the Appellant's main brief and this brief of amici curiae the Courts have found that if a claimant was required to meet certain requirements (prerequisites) of employment he will not qualify for unemployment benefits if he lost his employment because he did not meet the qualifications through no fault of his employer.

It is not contested that Claimant in the case at bar was required to possess a Teaching Certificate once he had passed the examination for certification. It is further uncontested that he had not obtained the required certification and therefore could not teach in Florida schools since he had used all his temporary certificates pending examination.

The Teaching Certificate is no different as a requirement of employment than having an automobile to deliver pizza as a requirement of employment, Neller v. Unemployment Appeals Commission, 510 So.2d 652 (Fla. 5th DCA 1987); or having an automobile as a requirement of employment by a county to attend to county business, Paskal v. Florida Department of Labor and Employment Security, 405 So.2d 1020 (Fla. 3d DCA 1981); or having physical access to

one's place of employment, Prison Rehabilitative Industries, supra, and see Home Fuel Oil Co. v. Unemployment Appeals Commission, 494 So.2d 268 (Fla. 2nd DCA 1986). See also: Coolaire Nordic International Corp. v. Florida Department of Commerce, Division of Employment Security, 356 So.2d 1317 (Fla. 4th DCA 1978), and certainly the case at bar parallels the Adain case, supra, wherein the claimant was required to possess a work permit from the INS. Also, see a claimant's requirement to possess a chauffeur's license. Co-Tran, Florida Transit Management, Inc. v. Lorenzo Goodman and Unemployment Appeals Commission, 415 So.2d 155 (Fla. 4 DCA 1982).

How much more, then, does the Lee case square entirely with the facts of the case at bar. Both cases had the same requirements of employment placed statutorily upon the claimants and both failed to meet the requirements without good cause attributable to their employer school boards.

CONCLUSION

The Order appealed from must be reversed and the long-standing statutory construction by every District Court of Appeals in this state must remain as the law or all the school districts will be hesitant to accept non-certified teachers for employment pursuant to Section 231.17, Florida Statutes.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief was furnished by 1st Class U.S. Mail to CHARLES A. COSTIN, Attorney for Appellant, Post Office Box 98, Port St. Joe, Florida, 32456-0098; and to JOHN MAHER and JERI ATKINSON-HAZELTON, Attorneys for Appellee, Unemployment Appeals Commission, State of Florida, Suite 221, Ashley Building, 1321 Executive Center Circle Drive, East, Tallahassee, Florida, 32399-0681, this 31ST day of July, 1989.

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