

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE GOODENOW,

Petitioner-Appellee,

v

PUBLIC SCHOOL EMPLOYEES RETIREMENT
BOARD and PUBLIC SCHOOL EMPLOYEES
RETIREMENT SYSTEM,

Respondents-Appellants.

UNPUBLISHED

March 6, 2012

No. 301553

Ingham Circuit Court

LC No. 09-001529-AA

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this dispute over retirement benefits, respondent Public School Employees Retirement System (the Retirement System) appeals by leave granted the circuit court's opinion and order reversing the Public School Employees Retirement Board's (the Retirement Board) decision in favor of the Retirement System. We conclude that the Retirement Board incorrectly interpreted and applied the statute establishing the start date for petitioner Lawrence Goodenow's retirement allowance. Because the statute plainly provides that the last day of actual service to the reporting unit is the start date, the Retirement Board should have reversed the Retirement System's decision to date Goodenow's retirement allowance from the first month after he submitted his resignation. For this reason, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Goodenow began teaching with the Lapeer Community Schools in 1975. Goodenow also was a member of the Lapeer Education Association and served as a negotiator for the Association. Goodenow's work for the Association was separate from his work for Lapeer Community Schools.

In late 2006 or early 2007, Goodenow decided to retire at the end of the school year, but the Association also asked him to serve on their negotiating team again. The Association's negotiations with Lapeer Community Schools began in Spring 2007. Goodenow worked through the school year, which ended on June 13, 2007. However, he continued to serve on the negotiating team until the negotiations were finalized in August 2007. Goodenow submitted a letter of resignation to Lapeer Community Schools on August 21, 2007. In the letter, he stated that his resignation was effective June 30, 2007. In reply, the Lapeer Community Schools'

superintendent accepted Goodenow's resignation "effective June 30, 2007" and thanked him for his service.

After Goodenow applied for his retirement benefits, the Retirement System initially took the position that Goodenow's service with the Association constituted continued employment with the Lapeer Community Schools. However, in a letter dated April 22, 2008, the Retirement System clarified that, as a tenured teacher, Goodenow remained employed "until he submitted his resignation on August 21, 2007." As such, it determined that his retirement began on the first day of the month following the month that he resigned, which was September 1, 2007. Accordingly, it refused to pay him more than \$6,500 in retirement benefits for the period from July 2007 to the end of August 2007.

In June 2008, Goodenow appealed the Retirement System's determination to the Retirement Board. The Retirement Board held a hearing in February 2009 and issued its decision and order in September of that same year. It determined that, under MCL 38.1383(1), Goodenow "was not entitled to a retirement allowance until he terminated his employment with the Lapeer Community Schools." It also determined that, because the statute sets the date, the parties' agreement that Goodenow ceased serving the school district in June 2007 did not control. For these reasons, the Retirement Board denied Goodenow's request to have his retirement allowance begin July 1, 2007 and denied his request for unpaid retirement benefits.

Goodenow then appealed the Retirement Board's decision to the circuit court. The circuit court held a hearing on the appeal in November 2010. After hearing the parties' arguments, the circuit court determined that the Retirement Board erred when it denied Goodenow's requests. Specifically, the circuit court determined that Goodenow and Lapeer Community Schools could contractually agree as to an effective date of Goodenow's resignation. In addition, it clarified that the effective date of Goodenow's retirement depended on the date he last worked, not the date he officially resigned. The circuit court concluded that the Retirement Board's decision should be reversed. The circuit court reversed the Retirement Board's decision and order on November 19, 2010.

The Retirement System then appealed to this Court.

II. ANALYSIS

A. STANDARD OF REVIEW

On appeal, the Retirement System argues that the Retirement Board properly interpreted the relevant statute and correctly applied it to the facts when it denied Goodenow's requests to alter the start of his retirement allowance and for unpaid retirement benefits. As such, the Retirement System maintains, the circuit court erred when it reversed the Retirement Board's decision and order. When reviewing a circuit court's review of an agency decision, this Court determines whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's findings. *Dep't of Labor and Economic Growth, Unemployment Ins Agency v Dykstra*, 283 Mich App 212, 222; 771 NW2d 423 (2009). The circuit court's review was limited to determining whether the agency's decision was contrary to law, was supported by substantial evidence, was arbitrary and

capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law. *Id.* at 223. However, this Court reviews de novo the proper interpretation and application of a statute. See *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002).

B. INTERPRETING MCL 38.1383(1)

The Legislature established a comprehensive statutory scheme governing the retirement benefits for public school employees with the enactment of the Public School Employees Retirement Act of 1979. See MCL 38.1301 *et seq.* Under the Retirement Act, a member—which generally means a public school employee, see MCL 38.1305(1)—“who no longer is working as a public school employee or in any other capacity for which service credit . . . is allowed”, shall be “entitled to a retirement allowance” upon the member’s written application to the retirement system. MCL 38.1381(1). The Legislature further provided that the retirement allowance shall date from a defined point in time:

Each retirement allowance shall date from the first of the month following the month in which the applicant satisfies the age and service requirements of this act and terminated reporting unit service, but not more than 12 months before the month in which the application was filed with the retirement system [MCL 38.1383(1).]

The dispute in this case is over the meaning of the phrase “terminated reporting unit service.” The phrase reporting unit is defined to mean, among other relevant entities, a public school district, such as Lapeer Community Schools. MCL 38.1307(3). The Retirement System and the Retirement Board took the position that the phrase “terminated reporting unit service” must be understood to mean the date that the applicant’s employment relationship with the reporting unit formally ended. Goodenow, in contrast, contends that the phrase must be understood to mean the last day that the applicant actually performed a service for the reporting unit. At first blush, it appears that MCL 38.1383(1) might be capable of either reading. However, when read as a whole and in context, we conclude that the Legislature did not intend that the retirement allowance would vary depending on the date that the applicant or the reporting unit took some action to formally sever the applicant’s employment with the reporting unit.

With MCL 38.1383(1), the Legislature provided that the start date for the retirement allowance should be the date that the applicant met a series of criteria: the applicant must have reached a certain age, completed a specified numbers of years’ service, and “terminated reporting unit service.” Here, the dispute centers on whether the phrase “terminated . . . service” means formally ended the employment relationship. The verb “to terminate” commonly means “to bring to an end” or “to end, conclude, or cease.” *Random House Webster’s College Dictionary* (1997). However, the Legislature defined “service” to mean “personal service performed as a public school employee or creditable under this act.” MCL 38.1308(1) (emphasis added). Because the term “performed” refers to completed service, it is plain that the phrase “terminated reporting unit service” cannot refer to the date that the applicant or the reporting unit formally terminated the employment relationship if that date is not also the date that the applicant last “performed” personal service. In order to constitute service, the applicant must

have “performed” the service and must have done so “as a public school employee” and the moment that an employee ceases to perform service as a “public school employee” the employee has “terminated reporting unit service” even if he or she has not yet formally resigned. The fact that the employee could have returned to the reporting unit and performed additional service is irrelevant. Once the employment relationship formally ends, the relevant date for purposes of calculating the start date for the retirement allowance is the date that the applicant last performed service for the reporting unit, not the date that the applicant or the reporting unit formally terminated the employment relationship.¹

Although this construction of MCL 38.1383(1) is compelled by the language of that statute and the definition of the term “service”, it also best comports with the remedial nature of the statute and the specific circumstances applicable to public school employees. See *O’Connell v Rese*, 334 Mich 208, 214-215; 54 NW2d 301 (1952) (noting that pension laws are remedial and should be liberally construed in favor of the persons intended to benefit thereby). Most public school employees will cease performing service for their reporting unit at the end of the school year. By establishing a date for the retirement allowance that coincides with the last date of service, the Legislature gave public school employees the ability to carefully contemplate whether to retire over the summer break without the fear that they might lose retirement benefits. Under the Retirement System’s preferred reading, a public school employee would have to make the decision to resign before the end of the school year or risk losing one or more months of retirement benefits. And indeed similarly situated employees might receive different retirement allowance dates simply because one employee decided to retire earlier than another employee. By establishing a fixed date premised on the last date of service, the Legislature ensured uniformity of application and gave the public school employees the opportunity to carefully consider their options without the fear of lost benefits.

C. APPLICATION TO THE FACTS

The Retirement Service and the Retirement Board both determined that “terminated reporting unit service” referred to the date that the applicant’s employment relationship with the reporting unit formally ended, rather than the date that the applicant last performed service for the reporting unit. Because Goodenow did not formally resign until he submitted his letter of resignation dated August 21, 2007, the Retirement Service and Retirement Board concluded that the retirement allowance dated from September 1, 2007. However, as already noted, the Retirement Service and the Retirement Board both erred when they concluded that phrase “terminated reporting unity service” meant formally ended employment with the reporting unit. The phrase, when understood in light of the definition of service, must be understood to mean the last date that the applicant performed service for the reporting unit.

¹ Because it is not necessary to a resolution of this case, we decline to consider whether a public school employee can establish a retroactive date for the commencement of the retirement allowance by agreement with the school district.

It was undisputed that the last day of the 2006 to 2007 school year was June 13, 2007. In addition, Lapeer Community Schools submitted an affidavit of salary to the Retirement System that stated that Goodenow was paid for 188 days of service for the 2006 to 2007 school year and that his last “paid day” was June 13, 2007. In the affidavit, the school district also noted that Goodenow received his last paycheck for that period of service on August 10, 2007. Finally, an assistant superintendent for the school district testified at the administrative hearing that Goodenow did not provide any personal service to the school district after June 30, 2007 and that he had fulfilled his obligations under the service contract for that school year. When MCL 38.1383(1) is properly interpreted and applied to these undisputed facts, it is clear that Goodenow last performed service for the school district—that is, he “terminated reporting unit service”—in June 2007. As such, his retirement allowance began on July 1, 2007.

III. CONCLUSION

The circuit court correctly determined that the Retirement Board’s decision and order rested on an erroneous interpretation of MCL 38.1383(1). Because the Retirement Board’s decision was premised on an erroneous interpretation of the applicable statute, it was contrary to law. Therefore, the trial court did not err when it reversed the decision and order. See *Dykstra*, 283 Mich App at 222.

Affirmed. As the prevailing party, Goodenow may tax his costs. MCR 7.219(A).

/s/ William C. Whitbeck

/s/ Michael J. Kelly