STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE GOODENOW, Petitioner-Appellee,	UNPUBLISHED March 6, 2012
v	No. 301553 Ingham Circuit Court
PUBLIC SCHOOL EMPLOYEES RETIREMENT BOARD, and PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM, Respondents-Appellants.	LC No. 09-001529-AA

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

SAWYER, P.J. (*dissenting*).

I respectfully dissent.

This Court reviews a trial court's review of an administrative agency's decision to determine if it applied the correct legal principles and properly applied the substantial evidence test. *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005). This is essentially the clearly erroneous standard. *Id.* A trial court's decision is clearly erroneous if we are left with a "definite and firm conviction that a mistake was made." *Id.* Here, the circuit court clearly made a mistake as it substituted its judgment for the administrative agency.

A circuit court generally must uphold an administrative agency's decision unless it is arbitrary or capricious, and not "supported by competent, material and substantial evidence on the whole record." *Id.* at 583. Substantial evidence is evidence that a "reasonable mind would accept as adequate to support a decision." *Id.* at 584. If substantial evidence exists, the trial court cannot substitute its judgment for the administrative agency even if they reach a different decision. *Id.*

According to Public School Employees' Retirement Act, MCL 38.1383(1), "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." A public school district is considered a "reporting unit," MCL 38.1307(3), and the term "service" is defined as "personal service performed as a public school employee or creditable under this act," MCL 38.1308(1).

The Michigan Public School Employees Retirement Board's determination that petitioner's termination date was August 21, 2007, regardless of the fact that the school district accepted petitioner's termination date as June 30, 2007,[1] was not arbitrary or capricious. Petitioner was a tenured employee and had a right to continued employment. Until he submitted his resignation, he was considered an employee and his position was being held for him. The parties agree that petitioner stopped performing personal services for the school on June 30, 2007, because the school year had ended and the school closed for the summer. Further, he continued to negotiate for the 2007/2008 contract before officially informing the district of his decision to retire. Had he not submitted his resignation, he would still have been an employee during fall 2007.

In sum, there was substantial evidence presented that would lead a reasonable mind to determine petitioner's termination date was August 21, 2007, the day he submitted his resignation. Therefore, I conclude that the circuit court clearly erred by reversing the Board's decision.

I would reverse and remand for entry of an order affirming the Board's decision.

/s/ David H. Sawyer

[1] The circuit court determined that the school district's acceptance of petitioner's resignation effective June 30, 2007, created a valid contract that bound ORS. This was erroneous. Assuming there was a valid contract between the school district and petitioner, it cannot bind ORS. It is well established that a nonparty to a contract cannot be bound by it. *EEOC v Waffle House, Inc*, 534 US 279, 294; 122 S Ct 754; 151 L Ed 2d 755 (2002). Therefore, the school district's acceptance of petitioner's retroactive termination date does not dictate the Board's decision.