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STATE OF MICHIGAN

COURT OF APPEALS

MARTIN MEIER,

Plaintiff-Appellant,

v

PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM,

Defendant-Appellee.

FOR PUBLICATION
October 13, 2022
9:10 a.m.

No. 354675
Mecosta Circuit Court
LC No. 20-025372-AA

Before: SHAPIRO, P.J., and GADOLA and YATES, JJ.

YATES, J.

Not everything a government worker tells you binds the government. Because the concept of estoppel against the government is quite narrow, this case is straightforward. Plaintiff, Martin Meier, worked as a public-school principal for many years. After he retired and began to draw his pension, he took jobs as a principal and a superintendent for school districts through Professional Contract Management, Inc. (PCMI), a third-party employer that contracts with districts to address staffing needs. In 2013, Marion Public Schools hired Meier to work as its superintendent, and he also became the principal of Marion Elementary School by contract with PCMI. But the Office of Retirement Services (ORS) questioned that arrangement and ultimately decided that Marion Public Schools employed plaintiff in both jobs for purposes of the Public School Employees Retirement Act, MCL 38.1301 *et seq*. Plaintiff unsuccessfully disputed that determination, and he ultimately brought his challenges to this Court. We, too, reject plaintiff's challenges, so we affirm.

I. FACTUAL BACKGROUND

Plaintiff worked for the Marion School District as both a superintendent and an elementary school principal even though, in those roles, he had two employers. In April 2013, Marion's Board of Education created a search committee for a combined position of superintendent and elementary school principal with a salary of $85,000. In May 2013, the school board accepted the contract to "hire Mr. Martin Meier as Superintendent/Elementary Principal for the 2013-2014 and 2014-2015 school year." Plaintiff and the Marion School District signed an employment contract obligating the school district to pay plaintiff "for the 2013-2014 school year a salary not to exceed $10,000

which is less than one-third (1/3) of his final average retirement compensation as determined by the Office of Retirement Services, per annum." The school district then engaged PCMI in a newly created contract to fill the position of elementary school principal.[1] As a result, plaintiff received approximately $85,000 per year from two sources—the school district and PCMI.

After an investigation, ORS sought to recoup $78,359.27 in pension benefits that plaintiff received from 2013 through 2017 for amounts over his permitted earnings under the Public School Employees Retirement Act (Retirement Act), MCL 38.1301 *et seq*.[2] An administrative law judge (ALJ) considered documentary evidence and testimony presented at an administrative hearing and then issued a proposal for decision determining that the totality of the circumstances indicated that the school district, not PCMI, actually employed plaintiff in both of his roles. The ALJ concluded that plaintiff's earnings should be aggregated, that plaintiff earned more than the maximum amount under which he could receive full pension benefits, and that plaintiff consequently should pay back pension benefits for the time that his earnings exceeded the permissible amount. The Public School Employees' Retirement Board (Retirement Board) adopted the ALJ's proposal for decision in full on January 23, 2020. Plaintiff then requested relief from the Mecosta County Circuit Court, which upheld the decision of the Retirement Board in a written opinion issued on July 7, 2020. Plaintiff now appeals from the circuit court's ruling.

II. LEGAL ANALYSIS

Plaintiff takes issue with almost everything that happened on the way to this Court. First, plaintiff attacks the agency's factual findings. In reviewing a lower court's analysis of an agency's decision, we are obligated to determine "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial-evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). The circuit court had to determine whether the agency's action was authorized by law and whether its findings were "supported by competent, material, and substantial evidence on the whole record." Const 1963, art 6, § 28. A decision is not authorized by law when it violates our constitution or a statute, if it exceeds the statutory authority or jurisdiction of the agency, if it was made by unlawful procedures resulting in material prejudice, or if it was arbitrary and capricious. *Northwestern Nat'l Cas Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998). As we have explained, "substantial evidence" is "evidence that a reasoning mind would accept as sufficient to support a conclusion." *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). It is "more than a mere scintilla but less than a preponderance of the evidence." *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 584; 701 NW2d 214 (2005). This standard is comparable to a search for clear error. *Dignan*, 253 Mich App at 576.

[1] The Marion School District had previously worked through PCMI to obtain teachers and coaches, but not principals.

[2] ORS, which is a division of the Michigan Department of Technology, Management and Budget, administers retirement programs for the Public School Employees' Retirement System, which the Public School Employees' Retirement Board oversees.

Additionally, plaintiff contends that the Retirement Board misapplied the Retirement Act, MCL 38.1301 *et seq*. We review de novo all matters of statutory interpretation. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008). "When construing a statute, the primary goal is to ascertain and give effect to the intent of the Legislature." *Mantei v Mich Pub Sch Employees Retirement Sys*, 256 Mich App 64, 72; 663 NW2d 486 (2003). This Court first looks at the statutory language, and if the expressed language is clear, we must enforce the statute as written. *Id*. When considering the text of a statute, "this Court presumes that every word is used for a purpose." *Id*. We must be sure that statutory wording is not ignored or rendered meaningless. *Id*. "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Id*. Agency interpretations of a statute "are entitled to respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute." *In re Rovas*, 482 Mich at 117-118. Respectful consideration is not the same as deference. *Id*. at 108. Respectful consideration simply means that the agency's decision may be helpful when construing a provision with a doubtful or obscure meaning. *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 363; 891 NW2d 884 (2016).

Finally, plaintiff insists that the agency's findings under the economic-reality test set forth in *Mantei*, 256 Mich App at 78-79, which requires consideration of "four basic factors" that bear upon whether plaintiff "was 'employed by a reporting unit' under" MCL 38.1361, *id.*, were not supported by competent, material, and substantial evidence in the administrative record. We must scrutinize the circuit court's evaluation of the Retirement Board's decision by asking "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial-evidence test to the agency's factual findings" under the clear-error standard. *Boyd*, 220 Mich App at 234; *Dignan*, 253 Mich App at 576.

A. GUIDANCE AND PROMISES FROM ORS

Plaintiff begins by faulting the ALJ for failing to address the ORS's guidance and promises in 2013 that the dual-employer arrangement with the Marion School District and PCMI was valid and appropriate. Specifically, plaintiff contends that the ALJ ignored evidence that ORS approved his dual-employer relationship with the school district, and he characterizes this error as outcome-determinative. But plaintiff failed to raise that argument in his objections to the ALJ's proposal for decision. The failure to object to a proposal for decision waives "any objections not raised." *Attorney General v Pub Serv Comm'n*, 136 Mich App 52, 56; 355 NW2d 640 (1984).[3] This rule makes good sense because the failure to assert an exception to a proposal for decision deprives the agency of the opportunity to correct its error. *Id*. The waiver extinguishes any error and precludes appellate review. *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 545; 854 NW2d 152 (2014). It is not sufficient to generally raise issues concerning an ALJ's decision. A plaintiff must specifically identify alleged errors so that the agency has an opportunity to correct them. Plaintiff did not object to the ALJ's proposal for decision by alleging that ORS approved his employment relationship with the Marion School District. As a result, the Retirement Board was not afforded

[3] Although our decisions issued before November 1, 1990, are not binding, MCR 7.215(J)(1), this Court has recently reaffirmed this principle in *ER Drugs v Dep't of Health and Human Servs*, ___ Mich App ___, ___; ___ NW2d __ (2022) (Docket No. 355108), slip op p 3.

the opportunity to review those arguments. Thus, those issues are waived for purposes of judicial review of the agency's determination.

Even if we consider plaintiff's challenges to the ALJ's proposal for decision on the merits, the administrative record does not support plaintiff's argument. With respect to ORS's supposed approval of plaintiff's employment arrangement, plaintiff furnished a 2013 e-mail from the Marion School District's counsel to ORS about the plan that became the basis for plaintiff's dual-employer arrangement. On appeal, plaintiff contends that "ORS responded to [the school district's counsel] and told him that the arrangement between Marion Public Schools and Appellant was acceptable and did not run afoul of MPSERS." This argument is riddled with fatal flaws. Plaintiff provided no evidence that ORS responded to the e-mail. Although plaintiff faults the ALJ's failure to credit "dispositive evidence," plaintiff failed to present that evidence to the ALJ or the Retirement Board. Moreover, plaintiff did not raise that issue in his application for leave to this Court, and our review is limited to the issues raised in plaintiff's application. See *Meier v Pub Sch Employees Retirement Sys*, unpublished order of the Court of Appeals, entered March 3, 2021 (Docket No. 354675).

Even if we look past all of plaintiff's procedural defaults and presume that evidence exists that plaintiff received an e-mail from someone at ORS supporting his dual-employer arrangement, that evidence would get plaintiff nowhere. Simply put, nobody from ORS involved with plaintiff's dual-employer arrangement had the authority to override the plain language of the Retirement Act or undermine the Retirement Board's authority to interpret and give effect to the Retirement Act. No employee of ORS had the power to countermand a statutory directive. At the federal level, the United States Supreme Court has explained that "judicial use of the equitable doctrine of estoppel cannot grant [a party] a money remedy that Congress has not authorized." *Office of Personnel Mgt v Richmond*, 496 US 414, 426; 111 S Ct 2465; 110 L Ed 2d 387 (1990). Applying that legal principle, the Supreme Court rejected an estoppel-based argument that "erroneous oral and written advice given by a Government employee to a benefits claimant" bound the federal government to provide benefits to the claimant. See *id.* at 415-416.

Our Supreme Court similarly has taken an extraordinarily narrow view of estoppel against the government, ruling that, "[a]lthough it is unfortunate that plaintiff received incorrect guidance, such guidance cannot alter the law of this state." *Martin v Secretary of State*, 482 Mich 956, 957; 755 NW2d 153 (2008) (MARKMAN, J., *concurring*).[4] As Justice MARKMAN put it: "There cannot be as many laws as there are public servants who dispense guidance or advice on the meaning of the law. Rather, such guidance or advice must always be understood as subordinate to the law actually enacted by the elected representatives of the people."[5] *Id*. Thus, the Retirement Act must

[4] Justice MARKMAN's concurrence was joined by three other justices, so his approach commanded the support of a majority of our Supreme Court. See *Martin*, 482 Mich at 957.

[5] Plaintiff recently filed a motion to remand. In that motion, plaintiff requested that we expand the record on appeal under MCR 7.216(A)(4) to include a newly submitted affidavit of Robert Huber, Marion's former counsel. Plaintiff contends that "[i]t is important that the lower court consider this new evidence in order to ensure that ORS is not pulling the wool of [sic] anyone's eyes by attempting to ignore its own advice and counsel given by Robert Huber in 2013." We decline the

be faithfully applied by the Retirement Board and this Court even if plaintiff received advice from an ORS employee that contradicted the language of the Retirement Act.

B. THE RETIREMENT ACT

We next turn to plaintiff's argument that the circuit court erred by affirming the Retirement Board's decision because the Retirement Board used indirect earnings from PCMI to aggregate his earnings under the Retirement Act. We review de novo this issue of statutory interpretation, *In re Rovas*, 482 Mich at117-118, giving meaning to every word of the statute and affording respect to the agency's interpretation. *Mantei*, 256 Mich App at 72. Under that analysis, we find no merit in plaintiff's claim that MCL 38.1361(1) was improperly used to aggregate his earnings.

When the Retirement Board rendered its decision on January 23, 2020, MCL 38.1361, as amended by 2018 PA 482,[6] provided in pertinent part:

> (1) Except as otherwise provided in this section, if a retirant is receiving a retirement allowance other than a disability allowance payable under this act . . . on account of either age or years of personal service performed, or both, and becomes employed by a reporting unit, the following must occur:
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> * * *
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> (b) The retirant's retirement allowance must be reduced by the lesser of the amount that the earnings in a calendar year exceed the amount permitted without a reduction of benefits under the social security act . . . or 1/3 of the retirant's final average compensation. For purposes of computing allowable earnings under this subdivision, the final average compensation must be increased by 5% for each full year of retirement.
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> * * *
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> (8) Notwithstanding any other provision of this act to the contrary, for a retirant who retires after June 30, 2010, who performs core services at a reporting unit as determined by the retirement system, subject to the definition of core services in this subsection, but who is employed by an entity other than the

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invitation to expand the record. Under MCR 7.210, "[i]n an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties." Moreover, as we have explained, proof of incorrect guidance or approval from an ORS employee cannot alter our resolution of the issues on appeal.

[6] Significantly, MCL 38.1361 has been amended twice since the administrative proceedings in this dispute took place, and, as a result, subsection (8) has been deleted. See 2020 PA 267, effective December 29, 2020; 2022 PA 184, effective July 25, 2022. All references to the statute in this opinion refer to the former version of MCL 38.1361 as amended by 2018 PA 482.

> reporting unit or is an independent contractor, the retirant forfeits his or her retirement allowance and the retirement system subsidy for health care benefits from the retirement system for the entire month of each month in which the retirant is performing core services at the reporting unit, unless the retirant is employed as described in subsection (9), (10), or (12).[7] . . . As used in this subsection, "core services" does not include custodial, food, or transportation services.

Plaintiff contends that the specific language "[n]otwithstanding any other provision of this act to the contrary" in MCL 38.1361(8) indicates the Legislature's intent that only that subsection, which does not apply to him, authorizes aggregation of earnings. Therefore, according to plaintiff, MCL 38.1361(1) could not apply no matter which entity employed him. But plaintiff's argument is incorrect because, under Michigan law, the "notwithstanding" language means that when two statutory provisions conflict, the provision with the "notwithstanding" language controls. Beyond that, subsections (1) and (8) of MCL 38.1361 do not even conflict with each other.

Our Supreme Court has construed the language "notwithstanding any other provision" to mean that the statutory subsection with that language controls with respect to any potential conflict between that subsection and another provision. See *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 313-315; 645 NW2d 34 (2002). In *Koontz*, this Court had interpreted the phrase "notwithstanding any other provision of this subsection" to mean that two subsections could not be independently applied. See *id.* at 313. But our Supreme Court reversed, ruling that statutory provisions that are not inconsistent can be harmonized. *Id*. at 315. In this case, the former MCL 38.1361(8) does not apply to plaintiff, as he acknowledges, because it governs employees who retired after June 30, 2010. Plaintiff retired on July 1, 2007. Accordingly, MCL 38.1361(1) and (8) can be harmonized as applied to plaintiff, and this aspect of plaintiff's argument is incorrect and contrary to *Koontz*.[8]

Next, plaintiff asserts that MCL 38.1361(1) cannot justify aggregation of earnings because it does not address indirect earnings. But plaintiff's contention ignores the basis of the Retirement Board's decision, so we will not consider it. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). The Retirement Board did not conclude that MCL 38.1361(1) authorized it to aggregate indirect earnings from an independent contractor. Rather, the Retirement Board concluded that MCL 38.1361(1) applied to plaintiff because he was *in fact* employed as an elementary school principal by Marion (the reporting unit), as opposed to PCMI (the independent

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[7] At the time of the Retirement Board's decision, MCL 38.1361(9) concerned substitute teachers, MCL 38.1361(10) concerned instructional coaches, and MCL 38.1361(12) concerned independent contractors in areas identified as having a critical labor shortage by the superintendent of public instruction. The parties have not argued that MCL 38.1361(12) applied to plaintiff's employment.

[8] Plaintiff relies on federal precedent to support his argument. Federal decisions interpreting state law are merely persuasive authority. *Rasheed v Chrysler Corp*, 445 Mich 109, 123 n 20; 517 NW2d 19 (1994). Regardless, plaintiff's federal precedent is inapplicable. Under federal law, "the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." *Cisneros v Alpine Ridge Group*, 508 US 10, 18; 113 S Ct 1898; 123 L Ed 2d 572 (1993). In plaintiff's case, MCL 38.1361(1) and (8) do not conflict because subsection (8) does not apply to plaintiff.

contractor). Therefore, the Retirement Board had no reason to exempt plaintiff from aggregation under MCL 38.1361(1), so we cannot fault the Retirement Board for refusing to do so.

C. APPLICATION OF *MANTEI*

Plaintiff's next argument flows from the legal principles we set forth in *Mantei*, 256 Mich App 64, where we explained "that the economic-reality test is the appropriate legal tool with which to assess whether petitioner was 'employed by a reporting unit' under [MCL 38.1361] of the retirement act." *Id.* at 79. That "test considers four basic factors: (1) control of the worker's duties, (2) payment of wages, (3) right to hire, fire, and discipline, and (4) performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal." *Id.* at 78. Because "[n]o single factor is controlling[,]" *id.* at 79, the ALJ had to consider all four factors. Plaintiff contends that the ALJ did not properly apply the four-factor economic-reality test, but the administrative record reveals that his argument lacks merit. For the sake of completeness, we shall consider each of the four factors *seriatim*.

1. CONTROL OF WORKER'S DUTIES

First, plaintiff argues that substantial evidence does not support the ALJ's finding that the Marion School District controlled his duties because PCMI's contract stated that it alone reserved the right to designate the methods by which services were furnished under its contract. The circuit court did not misapply the substantial-evidence standard when reviewing the ALJ's findings. In *Mantei*, 256 Mich App at 80, when considering who controlled the plaintiff's duties, we looked to the language of the contract and whether the plaintiff's responsibilities were the same before and after he was a direct employee. This Court also considered the superintendent's testimony that he did not supervise the plaintiff or engage in performance evaluations. *Id*. Here, the ALJ found that, while plaintiff's contract provided that PCMI had control over the individuals in the agreement, plaintiff did not report to the owner of PCMI, the owner did not recall many details about plaintiff's employment, and plaintiff only contacted PCMI to fulfill the annual requirements to maintain his employment. Plaintiff did not submit hours worked to PCMI. Furthermore, plaintiff stated in an affidavit that he reported to the school board in both capacities. The ALJ also noted that the job description that plaintiff provided reflected that the elementary principal (plaintiff) reported to the superintendent (also plaintiff). The ALJ also noted that plaintiff testified that, as superintendent, he supervised the other principal in the school district. Therefore, the ALJ found that the evidence weighed in favor of aggregation of plaintiff's earnings from the school district and PCMI.

Reviewing the ALJ's findings that were adopted by the Retirement Board, the circuit court considered the contract language, the owner of PCMI's testimony, plaintiff's lack of performance evaluations, and plaintiff's autonomy at work. The circuit court did not misapply the substantial-evidence test because it considered the complete record, which supported the underlying factual determinations. Plaintiff's written contract with PCMI made clear that "PCMI shall be exclusively and solely responsible for compensating, hiring, retaining, evaluating, disciplining, dismission [sic] and otherwise regulating the employment conditions, employment rights, compensation, and other similar matters" of individuals who provided services. But on May 23, 2013, the Marion School Board "accept[ed] the contract to hire Mr. Martin Meier as Superintendent/Elementary Principal for the 2013-2014 and 2014-2015 school year." Plaintiff also represented during the ORS review that, "[a]s both Superintendent and Elementary School Principal, I report directly to

our Board of Education. It is solely within the [School] Board's purview to continue or extend my employment as Superintendent and/or continue the contract with PCMI for my work as Principal."

To be sure, the owner of PCMI testified that he performed "the full vetting" process when hiring someone, and handled "anything H.R. from the—from the beginning to the end." Yet the owner of PCMI did not recall whether plaintiff ever received an evaluation from PCMI for his performance as an elementary school principal. The owner did not have any personal knowledge about plaintiff's application. Plaintiff also testified that he did not submit hours to PCMI. When asked how often he reported to the owner of PCMI, plaintiff testified, "Not very often. Not often. Annually. Yeah, I guess it was, I don't know, annually." Moreover, we also note that the record supports the ALJ's finding that plaintiff testified that he supervised the other principal in the school district. Under these circumstances, the circuit court did not clearly err when it held that the ALJ and the Retirement Board properly determined that PCMI did not actually control plaintiff's duties and that this factor weighed in favor of defendant's determination.

2. PAYMENT OF WORKER'S WAGES

On the second factor concerning the payment of wages, plaintiff contends that the ALJ and the Retirement Board erred by finding that that factor favored defendant's determination because it was undisputed that plaintiff was directly paid by PCMI. But we conclude that the circuit court did not misapply the substantial-evidence test. In *Mantei*, 256 Mich App at 83-84, we considered whether the plaintiff's wages as an elementary school principal employed by the reporting unit changed after his retirement and subsequent return to the same position as an employee of a third-party agency. *Id*. at 84. We also considered how the plaintiff's benefits changed before and after retirement. *Id*. In this case, the ALJ found that PCMI was responsible for paying plaintiff's wages. The ALJ correctly considered the language of the employment contracts on this question. See *id*. Still, the ALJ distinguished *Mantei* and found that PCMI was merely a conduit for plaintiff's earnings from Marion Public Schools. Unlike the plaintiff in *Mantei*, plaintiff did not have a prior relationship with Marion Public Schools. And unlike the plaintiff in *Mantei*, plaintiff was dually employed, directly compensated by the reporting unit in one of those roles. Plaintiff also received a life-insurance benefit directly from Marion Public Schools for his superintendent role. Beyond that, the ALJ noted that Marion Public Schools had advertised a single position and hired plaintiff in the dual roles. The ALJ found that the totality of the evidence established that, while plaintiff's wages were paid by PCMI, the arrangement to hire and compensate plaintiff was through Marion Public Schools.

In reviewing the agency's determination on the second factor, the circuit court considered plaintiff's contract with PCMI, his lack of any prior employment relationship with PCMI, and that PCMI compensated plaintiff. It considered the Marion School Board's advertisement of a single position with dual roles before plaintiff was hired for both roles. The circuit court conceded that, when comparing the direct and indirect evidence concerning plaintiff's payment, the court would have treated the second factor as favoring plaintiff or in equipoise. But the circuit court properly refused to substitute its judgment for that of the ALJ. *VanZandt*, 266 Mich App at 588.

Defendant's determination was based on competent, material, and substantial evidence. To be sure, PCMI's contract stated that PCMI was exclusively responsible for compensating plaintiff. Plaintiff testified that PCMI was solely responsible for paying his salary and withholding his taxes.

Plaintiff averred that, as a superintendent, he was paid by Marion Public Schools, but as a principal, he was paid by PCMI, which furnished his W-2, withheld taxes, and provided him a payroll check. But PCMI specifically invoiced Marion Public Schools for plaintiff. Moreover, the Marion School Board expressly stated its intent to create a "Superintendent/Principal Search Committee" to "post the administrative position to include salary of $85,000." Plaintiff testified that he earned about $85,000 from July 2014 to June 2015; about $83,000 from July 2015 to June 2016; and about $85,000 from July 2016 to June 2017. Those amounts were his total cash compensation for serving as superintendent and elementary school principal. Plaintiff also testified that he did not negotiate a salary with PCMI, and the owner of PCMI confirmed that PCMI had negotiated plaintiff's salary directly with Marion Public Schools. Also, the Marion School Board voted to renew plaintiff's "contracts," plural. And the school board provided plaintiff with life insurance, although this was arguably only in his role as superintendent.[9] Thus, although the circuit court would have resolved the second factor differently than the Retirement Board did, the circuit court correctly recognized that "[i]t is not a reviewing court's function to resolve conflicts in the evidence or to pass on the credibility of witnesses." See *VanZandt*, 266 Mich App at 588. We conclude that the circuit court did not misapply the substantial-evidence test on this factor.

We add one final note regarding this factor. We acknowledge that the *Mantei* Court briefly alluded to policy reasons for not discouraging cash-strapped school districts from finding solutions for their staffing needs. *Mantei*, 256 Mich App at 85-86. We offer no opinion on these matters. We note, however, that the *Mantei* Court took seriously the fact that when the plaintiff in that case returned to his role as principal through the third-party agency, he accepted a significant reduction in pay. Here, the record contains no evidence that Marion Public Schools set up the dual-employer arrangement for plaintiff as a cost-saving measure. Indeed, the evidence strongly suggests that the arrangement was created to alleviate potential conflict between plaintiff's salary and his pension.

3. RIGHT TO HIRE, FIRE, AND DISCIPLINE

Turning to the third factor, plaintiff argues that PCMI had the exclusive right to hire, fire, and discipline him even though Marion Public Schools screened and chose him. Neither the ALJ, the Retirement Board, nor the circuit court addressed the at-will nature of plaintiff's employment. We nonetheless conclude that the circuit court did not misapply the substantial-evidence test when reviewing the factual findings. *VanZandt*, 266 Mich App at 588. In *Mantei*, this Court considered the contractual language governing hiring, firing, and discipline and also noted that the plaintiff's contract was for at-will employment, as opposed to employment accompanied by normal statutory protections afforded to school administrators. *Mantei*, 256 Mich App at 84.

[9] We note that the circuit court erred when it observed that plaintiff had no prior employment relationship with PCMI. Plaintiff testified that he had interviewed with PCMI in 2007, and he had previously worked for PCMI in Roscommon Public Schools for two and a half years beginning in about 2009 or 2010. The ALJ found that plaintiff had no previous employment relationship *with Marion Public Schools* through PCMI. Thus, the circuit court erred on review, but the Retirement Board did not err in its determination on this point.

In analyzing the right to hire, fire, and discipline, the ALJ considered the language of the contract, finding it relevant, but not dispositive. As we have noted, Marion Public Schools posted one position, and plaintiff interviewed for one combined position. In his affidavit, plaintiff stated that he reported to the Marion School Board in both roles. The description of his job as a principal indicated that he reported directly to himself in that role. In its review, the circuit court considered the contract with PCMI, that plaintiff had been hired in two capacities, including one in which he reported to himself, and that plaintiff averred that he reported to the Marion School Board in both roles. The circuit court considered plaintiff's lack of previous employment with the Marion School District. And it noted that because Marion Public Schools had the power to terminate the contract, it effectively controlled whether plaintiff was employed. Finally, the circuit court considered that plaintiff reported directly to the Marion School Board and had little contact with PCMI.

Under the terms of PCMI's contract, "PCMI shall be exclusively and solely responsible for compensating, hiring, retaining, evaluating, disciplining, dismission [sic] and otherwise regulating the employment conditions, employment rights, compensation, and other similar matters" for those who provided services. The contract made clear that all PCMI employees were at-will employees, and the owner of PCMI testified that plaintiff was an at-will PCMI employee who could have been fired at any time. The owner of PCMI further testified that PCMI was obligated to evaluate the individuals it assigned to school districts, but he could not remember evaluating plaintiff. Also, the owner could not recall whether plaintiff was allowed to do simultaneous work, though he did not think it would have affected plaintiff's standing with PCMI. In contrast, the Marion School Board expressed its intent to create a joint position, it accepted plaintiff's employment in the joint position, and plaintiff stated that he reported to the Marion School Board and it was "solely within the [School] Board's purview to continue or extend my employment as Superintendent and/or continue the contract with PCMI for my work as Principal." And at the school board's April 14, 2017, meeting, the school board voted to "renew Mr. Meier's *contracts* for two years." (Emphasis added.) To be sure, no one thus far has addressed the relevant consideration of plaintiff's at-will employment. While the contractual language stated otherwise, conflicting evidence provided by plaintiff indicated that Marion Public Schools was the party to whom he reported and that Marion Public Schools had the authority to continue to contract for his work. Because plaintiff essentially oversaw himself and PCMI did not provide him with evaluations or have much contact with him at all, we conclude that if the Retirement Board and the circuit court had considered plaintiff's at-will employment, the finding on the third factor would not have come out differently.

4. PERFORMANCE OF DUTIES AS PART OF EMPLOYER'S BUSINESS

Finally, plaintiff asserts that the fourth factor did not favor defendant's determination because his contract specified that he should not be considered an employee of Marion Public Schools for any purpose. Again, we conclude that the circuit court did not misapply the substantial-evidence test during its review. *VanZandt*, 266 Mich App at 588. In *Mantei*, 256 Mich App at 85, this Court considered that the plaintiff's work was integral to the school district. Although we also considered that the parties' designations of roles and responsibilities could well be motivated by self-interest, we stated that the employment agreement was still relevant. *Id.* at 85-86. This Court specifically emphasized contract language stating that the plaintiff "shall not be considered an employee of the District for any purpose." *Id.* at 86.

Here, the ALJ considered language in the PCMI contract stating that plaintiff ought not be considered an employee of Marion Public Schools for any purpose. The ALJ also considered that Marion indisputably employed plaintiff as a superintendent to provide educational services within the school district. That responsibility was entwined within the two positions plaintiff held. The ALJ found that there was a lack of evidence regarding how plaintiff spent his time in each position, noting that what little evidence existed on that point was contradictory. Reviewing the Retirement Board's decision, the circuit court weighed plaintiff's dual roles, the lack of demarcation of hours he worked in either role, and that his employment furthered the goals of the Marion School District. These decisions were not clearly erroneous.

Plaintiff's dual roles are unique to this case. The record reflects that plaintiff stated that he performed two separate jobs for Marion Public Schools and that Marion had incorrectly informed ORS that he performed 40 hours of work each week as a superintendent. Under the employment agreement with PCMI, PCMI was "regarded at all times as performing services as independent contractors of the District." But when asked whether PCMI intended plaintiff to be an employee of the school district, PCMI's owner testified that PCMI played no role in that process. Further, plaintiff at first testified that he believed that he performed superintendent duties for about 20 hours each month, but he later testified that he believed he performed superintendent duties for about 20 hours each pay period. Plaintiff did not report the hours that he worked. Some days required him to be a principal all day, and some did not. Plaintiff testified that he worked as a principal perhaps 20 or 30 hours each week. As an elementary school principal, plaintiff reported to himself as the superintendent. Plaintiff further testified that he had two offices, both located in the elementary school building. Therefore, nothing in the record undermines the Retirement Board's approach to the fourth factor.

5. COMPARISON WITH *MANTEI*

Moving beyond detailed analysis of each of the four factors, plaintiff broadly contends that this case is so similar to *Mantei* that the administrative and judicial decision-makers should have reached the same result as we did in *Mantei* and ruled in his favor. We reject this argument because plaintiff's case differs from *Mantei* in several significant respects.[10] The *Mantei* plaintiff was not his own superintendent, was not directly employed by the school district in another capacity, and was not receiving a predetermined wage for a blended position that was split into a dual-employer arrangement where only one position was contracted through a third-party employer. Even more importantly, plaintiff's employment contract with the Marion School District expressly provided that the school district "agree[d] to pay Superintendent for the 2013-2014 school year a salary not to exceed $10,000 which is less than one-third (1/3) of his final average retirement compensation as determined by the Office of Retirement Services, per annum." In other words, plaintiff had his employment contract intentionally structured to get around the aggregation that was at the heart of

[10] Plaintiff has complained so much about the alleged lack of adherence to *Mantei* that he has even argued that the administrative investigation was predicated upon a purported lack of knowledge of that decision. Whether specific ORS employees knew about *Mantei* is entirely beside the point at this juncture. The agency's determination must be judged by its final action reflected in the ruling in the ALJ's proposal for decision that the Retirement Board adopted.

the parties' contractual relationship. Accordingly, we conclude that the circuit court appropriately determined that the Retirement Board's decision was based on competent, material, and substantial evidence.

Affirmed.

/s/ Christopher P. Yates
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola