STATE OF MICHIGAN

COURT OF APPEALS

JAMES C. MCCLOUGHAN,

Petitioner-Appellee,

v

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

Respondents-Appellants.

UNPUBLISHED
December 20, 2011

No. 300750
Ingham Circuit Court
LC No. 10-000561-AA

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondents, Public School Employees Retirement System (PSERS) and Public School Employees Retirement Board (the retirement board), appeal by leave granted from the circuit court's opinion and order reversing the retirement board's decision that petitioner was not eligible for intervening military service credit in calculating his retirement benefits. We affirm.

I. FACTS

In March 1968, petitioner applied for a teaching and coaching position with South Haven Public Schools (South Haven). South Haven offered petitioner a job and he accepted. Petitioner and two members of the South Haven Board of Education executed an employment contract dated May 13, 1968. The contract was for the 1968-1969 school year. It covered a 9 1/2 month period beginning September 3, 1968, and ending June 13, 1969. It indicated that petitioner was to serve as South Haven High School's junior varsity football coach and the varsity wrestling assistant coach. Petitioner testified that during the summer of 1968, although he was not to receive a paycheck until the school year started, he assumed his duties as coach and assistant coach, attended practices, participated in strategy sessions, and accompanied the wrestling team to a camp and competition.[1]

[1] There is some dispute regarding petitioner's coaching activity during the summer of 1968; specifically, the parties dispute whether petitioner coached the South Haven high school wrestling team or an unaffiliated AAU (amateur athletic union) team. Respondent's brief on

Around the same time, Selective Services required petitioner to attend a physical examination in preparation for being drafted into the United States Armed Forces. Petitioner informed the school system, and it sent two letters to the Van Buren County Draft Board requesting an occupational deferral. Each request was denied, and on August 29, 1968, petitioner was inducted into the army. Petitioner served as a combat medic in Vietnam for the next two years and was honorably discharged on June 4, 1970.

Petitioner executed another employment contract with South Haven on June 26, 1970. This contract was for the 1970-1971 school year and covered a 9 1/2 month period beginning September 2, 1970, and ending June 11, 1970. In addition to his teaching position, petitioner had similar coaching duties as he did under the first contract. South Haven placed petitioner at step 3 of its salary schedule and listed his formal seniority date as September 3, 1968. Petitioner worked for the school until his retirement at the end of the 2008 school year. He was recognized by the South Haven Board of Education for 40 years of service.

In 2007, in preparation for retirement, petitioner submitted an application to PSERS to receive intervening active-duty service credit for his military service. PSERS denied the application on the basis that petitioner had not begun his employment before he began military service. Petitioner requested a contested case hearing, which was held on September 10, 2009. Petitioner was the sole witness at the hearing. Both sides submitted documentary evidence and briefs.

The retirement board's decision

In a proposal for decision issued February 16, 2010, the hearing officer recommended that the retirement board enter an order denying petitioner's request for intervening service credit because petitioner never coached or taught on or after the relevant contract's "effective date," September 3, 1968. The hearing officer concluded that the employment contract alone did not create an employee/employer relationship because employment contracts are unilateral and do not become biding until the employee begins work under the terms of the contract. After indicating that petitioner could not "become an employee until he performed, i.e. taught or coached, under the contract," the hearing officer found that any coaching during the summer of 1968 was gratuitous. The hearing officer then found as a "Matter of Fact" that petitioner's employment "did not commence until after he was discharged and began teaching and coaching on September 2, 1970." The retirement board adopted the hearing officer's proposal for decision in an April 22, 2010, final decision and order.

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appeal repeatedly characterizes petitioner's activity as "assistance with an out-of-season AAU wrestling team, [with a] partial makeup of high school wrestlers from South Haven." However, petitioner's testimony on this issue was clear. He was specifically asked: "And let me—let me stop you here. When you say, the wrestling team, what wrestling are you talking about." He responded: "The South Haven High School Rams Wrestling Team, purple and gold. I bleed purple and sweat gold. And I worked out with them and—and coached them that summer of 1968."

Appeal to the circuit court

Petitioner appealed to the Ingham Circuit Court. It reversed the retirement board's decision in an opinion and order issued October 1, 2010. The court stated that the key question was whether petitioner was a "public school employee" pursuant to MCL 38.1305 when he was inducted into the army. The court identified several definitions or tests for "employee" and held that petitioner was an employee of the school district before his induction into the army under each one.

On May 2, 2011, we granted respondents' application for leave to appeal.

II. STANDARD OF REVIEW

Circuit court review of an administrative agency's decision

> Traditionally, a circuit court's review of an administrative agency's decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law. However, it is axiomatic that questions of statutory interpretation are reviewed by appellate courts de novo. [*Bandeen v Pub Sch Employees' Retirement Bd*, 282 Mich App 509, 514; 766 NW2d 10 (2009) (citation omitted).]

Our review of the circuit court's decision

> "This Court reviews a lower court's review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings, which is essentially a clearly erroneous standard of review." *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005). Therefore, a circuit court's factual determination is reversed only if this Court is "left with a definite and firm conviction that a mistake was made." *Id*. at 585. In addition, the proper construction and interpretation of a statute are questions of law, which are reviewed de novo by this Court. See *People v Sierb*, 456 Mich 519, 522, 581 NW2d 219 (1998). [*Bandeen*, 282 Mich App at 515.]

The issue here is whether petitioner met the requirements of MCL 38.1373 and was therefore entitled to intervening military service credit. This involves determining whether petitioner was a "member" pursuant to MCL 38.1373 when he was inducted into the army. Because the necessary facts are undisputed, this is a legal question of statutory interpretation. As such, we will review the present issue de novo. *Bandeen*, 282 Mich App at 515.

III. ANALYSIS

MCL 38.1373 provides, in pertinent part:

> A member of this retirement system who enters active duty with the armed forces and within 24 months after the date of the member's honorable discharge or release from active duty from the armed forces resumes employment as a public school employee under this act . . . shall receive not more than 6 years of service credit, except required service extending beyond 6 years, for time spent in the armed forces credited to the member as a member of the retirement system.

The word "member" is defined as a "public school employee," MCL 38.1305(1), which is in turn defined as "an employee of a public local school district," MCL 38.1306(5).

This Court previously addressed the definition of "employee" in MCL 38.1306(5). *Bandeen*, 282 Mich App at 517. In *Bandeen*, the retirement board denied the petitioner's application to purchase maternity/child rearing service credit. *Id*. at 515. The controlling issue was whether a "day-to-day" substitute teacher was an employee as defined in MCL 38.1306(5). *Id*. at 517. This Court first recognized that the term employee was not defined in the statute. *Id*. It then referenced the principles that undefined statutory terms are given their plain and ordinary meanings and that consulting a dictionary is proper in defining such terms. *Id*. The *Bandeen* Court noted that in *Rakowski v Sarb*, 269 Mich App 619, 626; 713 NW2d 787 (2006), this Court used the Random House Webster's College Dictionary (1992) to define the term employee as ""a person who has been hired to work for another."" *Bandeen*, 282 Mich App at 517. The *Bandeen* Court concluded, in part:

> When petitioner was hired to work as a substitute teacher, she certainly could be considered an employee. However, she was not always "hired," or under a contract of hire, by the very nature of her employment. Thus, her status at the time she left service for her alleged maternity/child rearing is at issue.
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> Because petitioner was a substitute teacher at the relevant time and hired only on a day to day basis, we conclude that she was not a public school employee at the time she decided to no longer accept substitute teaching assignments after the 1973 holiday break. She was not "hired" to work at that time. . . . As a day-to-day substitute teacher, petitioner could not be classified as having a temporary absence with the intent to return. She was not guaranteed to return, and had no approval for a temporary absence. [*Id*. at 517-518.]

After our review of the decisions below, we find that the retirement board, in its analysis, did not adequately take into account the definition set forth in *Bandeen*. Specifically, it did not address whether petitioner was "a person who has been hired to work for another" at the time he was inducted into the army. The proposal for decision adopted by the retirement board addressed *Bandeen* as follows:

> Finally, Mr. McCloughan argues that appellate decisions require a broad definition of the term "public school employee" as it is used in the Act. The only case on point involved a substitute teacher who was deemed not to be a public

> school employee, as the term is defined in MCL 38.1306(5), because of the temporal nature of her assignments. *Bandeen v Public School Employees Retirement Board*, 282 Mich App 509, 518; 766 NW2d 10 (2009). Mr. McCloughan attempts to contrast himself with the Petitioner in *Bandeen* by noting he was obligated under his employment contract perform [sic] certain functions. However, this begs the question of whether those obligations ever came into effect. Obviously, had Mr. McCloughan taught or coached on or after the contract's effective date, September 3, 1968, he would have been a public school employee. However, that never occurred because of his induction into the Army on August 29, 1968. Since he did not perform under the employment contract, he never became an employee of a public local school district, which would have made him a public school employee under MCL 38.1306(5).

In light of *Bandeen*, the proper test was whether petitioner was "a person who has been hired to work for another" at the time he was inducted into the army. The retirement board's decision was thus affected by a substantial and material error of law. Applying the *Bandeen* definition, we hold that petitioner was an employee when he was inducted into the army. At the time of his induction, the answer to the question, "has petitioner been hired to work for South Haven?" was clearly "yes." Petitioner was hired when he and representatives of the South Haven Board of Education signed the employment contract. At the time of his induction, petitioner was an employee pursuant to *Bandeen* and pursuant to MCL 38.1305(1) and MCL 38.1306(5); he was also a "member" pursuant to MCL 38.1373. He was therefore entitled to the intervening military service credit that the retirement board denied.

Although parts of the circuit court's analysis were not correct, it nonetheless reached the correct result when it reversed the retirement board's decision. Any error committed by the circuit court in applying the wrong standard of review does not require reversal, especially given our de novo standard of review. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000) ("[W]e will not reverse the court's order when the right result was reached for the wrong reason."); *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005), quoting *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("'A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.'").

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter