This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2053

Debra Ladlie,
Respondent,

vs.

Industrial Sealing & Lubrication, Inc.,
Relator,

Department of Employment and Economic Development,
Respondent.

Filed September 3, 2013
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 30006749-3

Michael J. Minenko, Edina, Minnesota (for respondent Ladlie)

Philip G. Villaume, Jeffrey D. Schiek, Villaume & Schiek, P.A., Bloomington, Minnesota (for relator)

Lee B. Nelson, Amy Lawler, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Hooten, Presiding Judge; Kalitowski, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator-employer challenges the determination of an unemployment law judge (ULJ) that respondent-applicant was an employee rather than an independent contractor. We affirm.

FACTS

Relator-employer Industrial Sealing & Lubrication, Inc. (ISL), based in Kansas, sells "maintenance reliability products" from about 50 manufacturers to end users. ISL is operated by a father and son: David A. Consiglio is the father and the company's president, while David N. Consiglio is the son and vice-president.[1] Respondent-applicant Debra Ladlie testified that she was offered a job with ISL in April of 2010, and, after a lengthy training period, began working on her own in October of 2010. Ladlie's last day was March 22, 2012, and she requested unemployment benefits starting May 20, 2012.

Respondent Minnesota Department of Employment and Economic Development (DEED) initiated a field audit of ISL to determine if Ladlie had an employment relationship with ISL. Both ISL and Ladlie submitted information and documentation regarding the employment relationship. ISL submitted Ladlie's weekly sales report from the week prior to her termination in March of 2012, an e-mail from Ladlie to the Consiglios regarding her daily activities, and tax forms (1099-MISC) for 2010 and 2011 indicating that Ladlie was paid "nonemployee compensation" from ISL. ISL also

[1] Only the younger Consiglio testified before the ULJ.

submitted an earning information worksheet indicating what Ladlie earned from the company.

Ladlie submitted a copy of the termination letter she received from ISL, which demands that she return a vehicle, a cell phone, demonstration equipment, product samples, literature, customer lists, business cards, and "any other ISL property" in her possession. Ladlie also submitted several e-mails she received from ISL, some of which indicated that Ladlie "need[ed] to call [Dave] ASAP per his request" because she had not checked in that morning and her voicemail box was full; that ISL sent Ladlie a new cell phone and that she needed to send back her old one; that Ladlie was to be provided computer help by a third party so that she could access a shared computing space; that ISL had learned Ladlie was "involved in an accident in our vehicle on 3/20/12"; that ISL needed to be "made aware of [Ladlie's] daily activities and [her] timely call reports"; that Ladlie and ISL had a conversation about sales goals and the need to have more sales activity; that weekly call reports needed to be sent to ISL by 8:00 a.m. each Monday; and that an inventory of product was requested from Ladlie. Ladlie also submitted an ISL memorandum regarding a sales meeting in March 2011, with product demonstrations from several manufacturers, and with information regarding rooms at a specific hotel that are "under [ISL]/David Consiglio." In addition, Ladlie submitted copies of gas, food, and office supply receipts reimbursed by ISL.

Based on this documentation and information, DEED determined that Ladlie was employed by ISL. This resolution was summarized by the field auditor, who stated that it was "very apparent that [the] company wants them treated as 'IC's' but also very

apparent that they want to control the worker as much as an employee." ISL appealed this determination, and a telephonic hearing was scheduled before a ULJ.

The ULJ heard testimony from David N. Consiglio about ISL's business, and Ladlie's role of "[s]ales consulting, making sales calls, [and] presenting products to the customers." Consiglio testified that the company had seven employees, three of which were "sales representatives", and six independent contractors, which were all "sales consultants." Consiglio distinguished the sales-representative employees from the sales-consultant contractors by stating that ISL "directly control[s] the employees, [and] are able to dictate when they go, where they go and how they get there," and noting that the employees were provided with vacation and paid time off.

According to Consiglio, Ladlie was contracted to sell their manufacturers' product lines in Minnesota and surrounding areas, and that she was "[f]ree to call on whomever she wished and expand those sales at her discretion on her own timeline." Consiglio testified that he believed that Ladlie "could represent any other company that did not sell directly competing product[s]," but did not know whether Ladlie had any other clients while she worked with them. As to compensation, Consiglio agreed that Ladlie "was paid a flat rate every month," with "the opportunity to earn commission above that" of 30% of the gross profit of her sales to the extent that such profits exceeded the flat rate of $2,800.

Consiglio testified that Ladlie signed a copy of the independent-contractor agreement from ISL, but that the signed copy was destroyed by water from a leaking roof. Consiglio acknowledged that he was not personally present when Ladlie signed the

contract, but testified that his father, the president of ISL, was present. Consiglio testified that the covenant-not-to-compete language in the unsigned contract submitted by ISL was meant to protect ISL so that Ladlie could not share what she had learned about the products and markets with ISL's competitors. Consiglio testified that ISL requested a "weekly synopsis of events" and "a daily check-in typically in the morning . . . so that if a customer did contact the office directly and needed to talk to her," they would be able to direct the call or give information. Further, Consiglio testified that ISL and Ladlie had mutally-set sales and production goals, but that such goals were not requirements of her independent-contractor relationship with ISL.

Consiglio testified that Ladlie had "conversations" with ISL about products and how to deal with customers, but indicated that these conversations were "random[]" rather than planned and that the manufacturers provided her with "product training" and literature. Consiglio stated that ISL "support[ed]" an annual meeting, in which manufacturers provided training, but that attending the meeting was not a requirement. Consiglio acknowledged that Ladlie was initially accompanied on sales calls by his father, to ease her transition into the job.

Consiglio testified that Ladlie "could have" hired someone to assist her in making calls to customers without ISL's approval, though he testified that ISL would have wanted to discuss the situation and learn about the person Ladlie hired. Consiglio also claimed that the independent-contractor agreement that ISL had with Ladlie did not prohibit Ladlie from assigning her duties to another person. Consiglio acknowledged that this option was not communicated to Ladlie.

Consiglio testified that Ladlie provided her own home office, but testified that ISL "directly" provided Ladlie with a cell phone, for business continuity if the relationship ended, as well as "a few shirts with our ISL logo on it that she could wear at her discretion." However, Consiglio testified that many of the things referenced in the termination letter as being requested back were provided by the product manufacturers, and that the vehicle referred to in the termination letter "was a personal vehicle" that his father chose to let Ladlie drive, was "not a company vehicle," and was "titled and registered in his name." Consiglio testified that ISL "reimbursed some fuel, supplies, and meal expenses," including "paper, pens, notebooks, [and] things of that nature." Finally, Consiglio testified that he "gave her" his "personal laptop," and that this computer was not provided by the company.

Consiglio testified that a "reasonable expectation" for someone to be successful in Ladlie's position required that she work approximately 40 hours per week. Consiglio testified that Ladlie had never been given any vacation or holiday pay. Ladlie testified that she worked about 45 or 50 hours per week, though Consiglio disputed that she worked as many hours as she claimed. Consiglio testified that the relationship ended because Ladlie was "non-responsive," such that ISL could not locate or communicate with her. Consiglio testified that this was a problem because "[s]he was expected to represent ISL and the products that we represent for these manufacturers and we had no idea that that was taking place." Consiglio acknowledged that the parties' contract could "be terminated with or without cause by either party with 30 days notice," that he did not

foresee "any sort of liability" for terminating the agreement without cause, and that ISL "had the right at any time, for any reason, to end the contract as did she."

Ladlie testified that the first time she had ever seen ISL's independent-contractor agreement was in conjunction with the DEED proceedings. She denied that she had ever signed such agreement. She testified that when she began working for ISL, the elder Consiglio, who lived outside the state, outlined ISL's expectations and visited her in Minnesota for a week or two a month at the beginning of her employment. While these supervisory visits by the elder Consiglio lessened over time, she was never really "cut loose" to work on her own, as the elder Consiglio would visit with her whenever she ran into problems or needed help. When the elder Consiglio visited Minnesota, he would either work in Ladlie's home office or she would go to his hotel to work. She agreed that she "had a lot of discretion" to work as she wanted when he was not there, but that her work was "outline[d]" for her. Ladlie testified that "[t]here was an expectation of how [she] sold" because "there was a very methodical way of how, [she] could have some leeway but there was a way that he wanted things done," and noted that she was trained to start with certain products and move on to others in her presentations.

Ladlie testified that she did not have any other clients while she worked for ISL, and that she could not have obtained any other clients. Ladlie testified that while she was never told that she had to work during the day, her work times were dictated by the work hours of her customers, who usually worked during normal business hours.

Ladlie testified that she was provided with training materials, product samples and literature, and access to the "backend of websites to get additional information," and was

“never allowed to ask the manufacturers for samples, [but] had to go through the office.” Ladlie testified that the car “was presented to [her] as a company car.” She further testified that she was surprised to hear Consiglio characterize the car and laptop as his personal possessions rather than company owned. Ladlie noted that she contacted an ISL computer administrator when she had trouble with the computer, and that she presumed that ISL provided the insurance on the car, though she did not have an insurance stub. Ladlie testified that she was given business cards with her name, the company-provided cell phone number, ISL’s Kansas address, the ISL logo, and a list of ISL’s products on the back. Ladlie also testified that she was reimbursed for, or ISL paid for, gas, hotels, her flights to training in Kansas and elsewhere, a printer and ink for her home office, paper, pens, a hard hat, and steel-toe boots. Ladlie stated that she returned these items to ISL when she was terminated.

As to compensation, Ladlie testified that she was paid “a salary of $2,800 a month,” but, consistent with the testimony of David N. Consiglio, she claimed that she would receive a commission of 30% of her gross profits exceeding $2,800. Ladlie testified that she filed her taxes for 2010 as an independent contractor, “which was an issue that” she talked to the elder Consiglio “about because that was not [her] agreement when we talked about compensation.”

Ladlie testified that “if [she] didn’t send in weekly reports then [her] pay was held,” and that she was further expected to “send an email in the morning and then talk to David at the end of the day.” Ladlie further testified that these expectations were the same for the employed sales representatives and for the contracted sales consultants.

Ladlie testified that she believed that ISL could set policies that she would have to follow, and that "they would tell you" that they could terminate the relationship for failing to follow specified rules or procedures. Further, Ladlie testified that ISL held a February 2011 sales meeting that the younger Consiglio required her to attend.

Ladlie testified that she did not know why she was discharged, but admitted that she did not feel that ISL had an obligation to keep the relationship going. However, she testified that she did feel like she had a right to damages for wrongful termination because "[t]here was a huge issue with harassment that was going on," and because there were "very stressful conditions." Ladlie agreed that she was never promised that she could only be terminated for cause, that she would be owed anything if she were to be terminated, or that she would receive notice before termination.

Following the hearing, the ULJ issued decisions[2] concluding that Ladlie was an employee of ISL for purposes of unemployment benefits. The ULJ found that "Ladlie was not expressly told when to work, but due to its nature such work is successfully performed during customary daytime work hours." The ULJ also found that "ISL provided training and materials on sales techniques and talking points," "outlined weekly production expectations," expected Ladlie "to report her calendar each morning," and required Ladlie "to submit weekly reports summarizing her activity." The ULJ also found that "[b]oth parties had the right to end the relationship for any reason, without

---

[2] The ULJ issued two decisions, with nearly identical language. One decision related to whether Ladlie was an employee of ISL, and therefore was eligible for unemployment benefits, while the other determined whether ISL must pay unemployment taxes on wages paid to Ladlie "and any others performing the same or similar services."

incurring liability," that ISL provided Ladlie with "numerous items such as a car, computer, mobile phone, and business cards and shirts with ISL's logo," that these items were returned when the relationship ended, and that ISL reimbursed Ladlie for travel expenses and office supplies.

In applying the relevant administrative rules in determining whether Ladlie was an employee or an independent contractor, the ULJ found that she was an employee, rather than an independent contractor. As support in reaching this conclusion, the ULJ underscored the parties' right to end the relationship without notice or liability, ISL's "right to control the means and manner of performance", ISL's provision of tools, and the method of payment for Ladlie's work. The ULJ further found that the lack of control of the location of the work was "of marginal relevance due to the nature of the arrangement and type of work."

ISL requested reconsideration, arguing that it did not provide Ladlie with a car or computer, did not pay "for the expense of [Ladlie's] home office," and did not provide the shirts with the ISL logo. ISL also argued that "[t]he finding that ISL could terminate [Ladlie] at any point without liability was perhaps taken out of context and/or Mr. Consiglio did not fully understand the question when he answered," because ISL "would have incurred some sort of liability," such as "among incurring other possible liabilities, it would still be liable to pay [Ladlie] her monthly advance and possible commissions." ISL argued that it did not have control based on the right to terminate, that the daily check-ins were merely an "expectation" and were not mandated, that Ladlie's conversations with the elder Consiglio about sales were as a friend rather than employer,

and that Ladlie was paid by commission. For her part, Ladlie submitted a document stating that Consiglio falsely testified that there was an independent-contractor agreement and that the car and laptop were not provided by the company.

The ULJ, on reconsideration, stated that "there is no finding ISL provided Ladlie with a car, a computer, or home office expenses." Rather, Ladlie was provided with the car and computer by people who "happened to be" affiliated with ISL, and that the affiliation was so significant that the fact that the items were not directly provided by ISL did not bear on the outcome, particularly because Ladlie was directed to return the items on termination. The ULJ noted that Consiglio testified that the shirts were provided by ISL, and that "[r]econsideration is not an opportunity for a party to change its testimony." The ULJ further stated that any continuing liability for commission post-termination was simply payment for pre-termination work; that the expectations of control through termination was shown by Ladlie's termination for failing to meet accountability expectations; that the elder Consiglio's friendship with Ladlie did not preclude an employment relationship; and that the payment structure was no different than a base pay plus commission. Thus, the ULJ affirmed the previous decision. ISL now appeals.

D E C I S I O N

"When reviewing a ULJ's decision, we may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 29 (Minn. App. 2012) (citing Minn. Stat. § 268.105, subd. 7(d) (2012)). Relator's substantial rights "may have been prejudiced" if "the findings, inferences,

conclusion, or decision are" outside of "the statutory authority or jurisdiction of the department," are affected by an error of law, are "unsupported by substantial evidence in view of the entire record as submitted," or are "arbitrary or capricious." Minn. Stat § 268.105, subd. 7(d). Minnesota courts have defined substantial evidence as: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

"Whether an individual is an employee or an independent contractor is a mixed question of law and fact. We review factual findings in the light most favorable to the decision. But where the facts are not disputed, a legal question is presented. We review questions of law de novo." *St. Croix Sensory Inc. v. Dep't of Emp't & Econ. Dev.*, 785 N.W.2d 796, 799 (Minn. App. 2010) (citations omitted); s*ee also Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 393 (Minn. App. 1996) ("After the controlling facts have been determined, the question becomes one of law.").

An employee is an "individual who is performing or has performed services for an employer in employment." Minn. Stat. § 268.035, subd. 13(1) (2012). Employment includes services performed by "an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor." *Id.*, subd. 15(a)(1) (2012). "In employment-status cases, there is no general rule that covers all situations, and each case will depend in large part upon its own particular facts." *St. Croix Sensory Inc.*, 785 N.W.2d at 800. However, "it is well settled that the nature of the

relationship of the parties is to be determined from the consequences which the law attaches to their arrangements and conduct rather than the label they might place upon it." *Id.* (quotation omitted). "Therefore, whether the parties have entered into a contract defining their relationship is not determinative." *Id.* (quotation omitted). The five factors to consider in determining whether a worker is an employee or an independent contractor are codified in Minnesota's administrative rules.

> When determining whether an individual is an employee or an independent contractor, five essential factors must be considered and weighed within a particular set of circumstances. Of the five essential factors to be considered, the two most important are those:
>
> A. that indicate the right or the lack of the right to control the means and manner of performance; and
>
> B. to discharge the worker without incurring liability. Other essential factors to be considered and weighed within the overall relationship are the mode of payment; furnishing of materials and tools; and control over the premises where the services are performed.
>
> Other factors, including some not specifically identified in this part, may be considered if a determination is inconclusive when applying the essential factors, and the degree of their importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

Minn. R. 3315.0555, subp. 1 (2011). These factors should be considered within the totality of the circumstances. *Moore Assocs., LLC*, 545 N.W.2d at 393.

The right or the lack of the right to control the means and manner of performance

"The determinative right of control is not merely over *what* is to be done, but primarily over *how* it is to be done." *St. Croix Sensory Inc.*, 785 N.W.2d at 800

(quotation omitted). Thus, "[f]actors that relate to the definition of a task, rather than the means of accomplishing it, are not relevant to the employment-status inquiry and do not support a finding of an employment relationship," because a "worker may be an independent contractor and still remain subject to control over the end product." *Id.* at 801 (quotation and alteration omitted). Control is "[t]he direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise," or alternatively, "the power or authority to manage, direct, or oversee." *Black's Law Dictionary* 378 (9th ed. 2009). But the "decisive character" of the right of control "in practical application fades into a twilight of uncertainty by reason of the fundamental differences in the nature of various occupations, by the varying arrangements of the parties and the circumstances of each particular case, and by such variable factors as the force of custom." *Frankle v. Twedt*, 234 Minn. 42, 48, 47 N.W.2d 482, 487 (1951). The right to control may be found even when the employee is far more skilled at the occupation than the employer, when the relationship is between geographically separated parties, or when the nature of the work requires or allows little supervision. *Id.*

Relator argues that it did not have the right to control Ladlie's work, because David N. Consiglio testified that ISL could not control the specifics of Ladlie's performance, Ladlie had discretion in how she did her work, and the training that Ladlie received was not formal training from ISL itself. ISL suggests that some of the ULJ's findings of fact were incorrect, specifically, the ULJ's findings that "ISL provided training and material on sales techniques and talking points," and that the daily and

weekly reporting done by Ladlie was a requirement. But, our review of the record reveals that the ULJ's findings were supported by substantial evidence. Ladlie testified that she received extensive training from the elder Consiglio at the outset of her employment with ISL and that, whenever she experienced any difficulties with her sales, he would come to Minnesota to assist her. Also, Ladlie was required to attend a sales meeting in February 2011 at which training was provided. While it is true that her training, as well as some of the training she received at the beginning of her employment, was given directly by the product manufacturers, ISL paid the travel expenses for the training. Further, ISL provided the demonstration product and trained Ladlie in its use. Ladlie testified that ISL also had specific expectations about how the sales presentations should be given and that she was trained on those specifics. Thus, there is substantial support in the record supporting the ULJ's finding that ISL provided training to Ladlie on the means of performing her work.

Similarly, the ULJ's finding that the reporting was a requirement is supported by testimony that Ladlie's pay was withheld if she did not comply with the weekly requirements, and by the documentary evidence that she received an e-mail from ISL stating that she needed to call in to report her daily schedule when she had not. Further, Consiglio testified that Ladlie was ultimately terminated in part because she was non-responsive, and noted several times that ISL expected to receive the reports but did not always receive them. Despite not actually receiving the reports, it appears clear that ISL believed that it had the ability to require those reports from Ladlie, which tends to indicate an employment relationship. *See Blue & White Taxi v. Carlson*, 496 N.W.2d

826, 829 (Minn. App. 1993) (noting that taxi drivers "completed and turned in log sheets showing their fares and trips," as a factor in finding an employment relationship).

While ISL is correct that Ladlie had a significant amount of discretion in her work on a day-to-day basis, this discretion would be expected where the employee is geographically distant from the employer's office, and where it would be both impossible and unhelpful to micro-manage the employee's performance. *See Neve v. Austin Daily Herald*, 552 N.W.2d 45, 48 (Minn. App. 1996) (noting that the requirements for the worker did not indicate control when considered "[i]n the newspaper industry" because the controls in that case "relate[d] to the definition of Neve's task and not to the means of accomplishing it"). In this case, Ladlie was only allowed to sell her customers products carried by ISL, was given the tools with which to make these sales, was trained by ISL on how to make the sales, and was expected to report her performance and schedule to ISL on a daily and weekly basis. While the specific time and place of these sales was not controlled by ISL, the timing and location would depend on the customers whether Ladlie was an employee or not. Thus, the ULJ did not err in determining that ISL had the right to control Ladlie's performance.

The right to discharge without incurring liability

ISL argues that it could not discharge Ladlie without liability, noting that even though Ladlie only worked part of the month of March, it paid her for the full month. However, there is no indication in the record that this payment was premised upon a contractual obligation. Further, there was no testimony regarding this payment in the telephonic hearing. ISL argued on reconsideration that it "would still be liable to pay

[Ladlie] her monthly advance and possible commissions," but this appears to be a reference to paying Ladlie for commission on sales she made prior to her termination and does not show that ISL was liable for anything after termination.

ISL also noted as evidence of its liability after discharge Ladlie's testimony that after her termination, ISL would be liable to her for any damages arising out of her harassment claims. But, to the extent that there is any liability on the part of ISL for harassment during Ladlie's term of employment, that liability could only be based on events which occurred during her employment, not as a result of any written contractual provision.

The mode of payment; furnishing of materials and tools; and control over the premises where the services are performed

In support of its claims that Ladlie is an independent contractor, ISL also highlights its payment of Ladlie by commission and Ladlie's acknowledgement that she was an independent contractor when she filed her taxes. The parties essentially agree that Ladlie was paid a flat monthly amount, but that her pay could increase according to a commission-based formula. There is no evidence that Ladlie was paid on a per-job, per-mile, or other incremental scale.[3] *Cf. Neve*, 552 N.W.2d at 48 (finding independent-contractor status where a newspaper delivery person was paid "a flat fee based on the size and number of customers on her route"). The flat monthly rate seems most appropriately

[3] Notably, the independent-contractor agreement states that payment would be purely percentage-based commission, though both parties testified that Ladlie was not paid according to this provision.

deemed a base salary, with a bonus for achieving certain sales goals. This was the conclusion reached by the ULJ, and that conclusion is supported by the evidence.

The ULJ did not make a finding regarding Ladlie's tax filings. "Evidence that an individual is responsible for his or her own tax obligations is indicative of independent-contractor status." *St. Croix Sensory Inc.*, 785 N.W.2d at 804. But the parties' label for their relationship does not affect whether the worker is an employee or independent contractor. *Id.* at 800. Further, to the extent that Ladlie's tax filings indicate the status of her relationship with ISL, Ladlie testified that filing her income taxes as an independent contractor "was not my agreement when we talked about compensation."

ISL does not dispute that it provided Ladlie with a cell phone, business cards, or other materials and equipment. Rather, ISL challenges the ULJ's finding that the provision of the car and computer could be imputed to ISL, despite testimony that they were the personal property of the Consiglios. But, the ULJ, while acknowledging that those items were not the property of ISL, found that they were nonetheless instruments of employment because they were provided by the president and vice-president of the company and were demanded back on termination. Moreover, when there were problems with the car and the computer, the company handled the problems and provided insurance coverage for the car. Thus, the ULJ's findings on this factor are not clearly erroneous.

Finally, ISL challenges the ULJ's finding that whether ISL controlled the location of Ladlie's work was irrelevant due to the nature of the work. But the indices of employment should be considered within the context of the industry involved. As it was clear that Ladlie was expected to travel to the customer to sell ISL's products, the

location of the work is inherently at the direction of the customer rather than the employee or the employer. That is true regardless of Ladlie's employment status. As a result, the ULJ did not err by placing lesser importance on this factor than the others.

Balancing of the factors

The ULJ concluded that the factors, considered in totality, favored the conclusion that Ladlie was employed by ISL.[4] We do not believe that the ULJ clearly erred, as ISL argued, in making findings of fact pertaining to the relationship between ISL and Ladlie. Because those findings of fact are not clearly erroneous, we affirm the ULJ's conclusion that Ladlie was an employee of ISL.[5]

Affirmed.

---

[4] ISL also argued that the ULJ erred by not making a specific credibility determination as to whether the independent-contractor agreement governed the relationship of the parties. But in light of both parties' testimony as to compensation, provision of materials, and reimbursement for expenses and insurance, it does not appear that this agreement was being followed regardless of whether it had been executed. Moreover, it has long been held that the label that parties place on a relationship is not determinative of whether the relationship is employment or not. *St. Croix Sensory Inc.*, 785 N.W.2d at 800.

[5] ISL also argues that the ULJ erred by concluding that it must pay unemployment taxes on all wages "paid to Ladlie, and any others performing the same or similar services." DEED did not address this issue. It is not clear from the record before us whether there are "any others performing the same or similar services" for ISL, but it is clear that, to the extent that such individuals exist, there is no evidence on this record that could support the ULJ's conclusion as to any other individuals. Thus, we believe this statement to be dicta. However, the effect that DEED gives to the ULJ's statement, in administering the unemployment benefit program, is not before us.