

STATE OF MICHIGAN
COURT OF APPEALS

DAN M. SLEE,

Petitioner-Appellee,

v

PUBLIC SCHOOL EMPLOYEES RETIREMENT
SYSTEM,

Respondent-Appellant.

UNPUBLISHED

September 16, 2008

No. 277890

Washtenaw Circuit Court

LC No. 06-001069-AA

Before: Donofrio, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent Public School Employees Retirement System appeals by leave granted from a circuit court order reversing the decision of respondent's Retirement Board (the Board). The Board determined that payments by petitioner's school district to petitioner reimbursing him for FICA taxes and covering amounts needed to purchase service credit did not qualify as compensation for purposes of calculating petitioner's retirement pay. We conclude that the circuit court misapprehended and misapplied the substantial evidence test relative to the Board's factual findings and did not apply the correct legal principles, where the Board's decision was supported by competent, material, and substantial evidence and was not contrary to law. Accordingly, we reverse the circuit court's order and reinstate the Board's decision.

A final agency decision is subject to court review but it must be upheld if it is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, is not otherwise affected by a substantial and material error of law, and is supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306(1)(d); *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 583-584; 701 NW2d 214 (2005); *Dignan v Michigan Pub School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). "Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence." *VanZandt, supra* at 584 (citation omitted). "If there is sufficient evidence, the circuit court may not substitute its judgment for that of the agency, even if the court might have reached a different result." *Id.* With regard to whether an agency decision is arbitrary or capricious, the circuit court must determine whether the decision lacks adequate determining principle, reflects an exercise of will or caprice without acknowledgment of principles, circumstances, or significance, reflects an absence of a principled and reasoned outcome, or reflects a freakish, whimsical, or humorous outcome. *Id.* at 584-585.

This Court reviews a circuit court's ruling in an appeal from an agency's decision to determine whether the circuit court applied the 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. *Id.* at 585. Accordingly, this Court will overturn a circuit court decision if this Court is left with a definite and firm conviction that a mistake was made. *Id.*

Under the Public School Employees Retirement Act of 1979 (PSERA), MCL 38.1301 *et seq.*, the amount of a retiree's pension is based, in part, on the retiree's final average compensation. *Dignan, supra* at 573 n 1, citing MCL 38.1304(12) and MCL 38.1303a(2). The final average compensation is determined by averaging the retiree's compensation for the last 36 months of employment. *Dignan, supra* at 573 n 1, citing MCL 38.1304(12).

A petitioner who seeks to have remuneration included in his or her final average compensation bears the burden of proof that the remuneration falls within the parameters of compensation reportable to the retirement system. MCL 38.1303a(6); *Dignan, supra* at 576. At issue in this case is whether the reimbursements of petitioner's FICA taxes and payments covering the purchase of service credit made by petitioner's employer qualify as compensation within the meaning of the PSERA and, therefore, may be considered in determining petitioner's final average compensation.

The PSERA defines compensation as follows:

(1) Except as otherwise provided in this act, "compensation" means the remuneration earned by a member for service performed as a public school employee.

(2) Compensation includes salary and wages and all of the following:

(a) Remuneration earned for all services performed as a public school employee including but not limited to, teaching, coaching, and participation in extracurricular activities.

(b) On a current basis, investments made in a tax sheltered annuity for a public school employee as remuneration for service under this act. The remuneration shall be valued at the amount of money actually paid into the annuity.

(c) All amounts deducted from the pay of a public school employee, including amounts deducted pursuant to the member investment plan.

(d) Longevity pay.

(e) Overtime pay for service performed outside of what is considered normal working hours for the affected employee.

(f) Pay for vacation, holiday, and sick leave while absent from work. As used in this subdivision, "sick leave" includes weekly worker's disability

compensation payments received for personal injury in the employ of and while employed by a reporting unit.

(g) Items of deferred compensation, exclusive of employer contributions to the retirement system.

(h) Merit pay as established by a reporting unit for the purpose of rewarding achievement of specific performance objectives.

(3) Compensation does not include any of the following:

(a) Payments for unused sick or annual leave.

(b) Bonus payments.

(c) Payments for hospitalization insurance and life insurance premiums.

(d) Other fringe benefits paid by or from the funds of employers of public school employees.

(e) Remuneration paid for the specific purpose of increasing the final average compensation.

(f) Compensation in excess of an amount over the level of compensation reported for the preceding year except increases provided by the normal salary schedule for the current job classification. In cases where the current job classification in the reporting unit has less than 3 members, the normal salary schedule for the most nearly identical job classification in the reporting unit or in similar reporting units shall be used. [MCL 38.1303a.]

It is for the Board to determine, on the basis of information and documentation provided by a member, whether any form of remuneration paid to a member is identified in MCL 38.1303a and whether any form of remuneration that is not identified in MCL 38.1303a should be considered compensation reportable under MCL 38.1303a. MCL 38.1303a(5).

In *Adrian School Dist v Michigan Pub School Employees' Retirement Sys*, 458 Mich 326, 333-334; 582 NW2d 767 (1998), the Court stated that the term "compensation" should be broadly interpreted, reasoning:

The Legislature's use of the term "compensation" in the retirement act suggests that a broad interpretation is appropriate in crediting remuneration received by public school employees. The Legislature could have chosen words having a nonrestrictive meaning. It could have selected the word "salary" as the basis for retirement credit. "Salary" has been defined as a periodic payment made to a person for official or professional services or for regular work.

In *Adrian School Dist*, the Court established a framework for determining whether an item is properly considered compensation for retirement purposes. Under that framework, it is first necessary to determine whether remuneration is expressly excluded from the statutory

definition of compensation.¹ If it is not, it must be determined whether the remuneration falls within one of the specific categories of compensation, which are defined broadly. *Adrian School Dist, supra* at 335. Although the current amended version of the statutory definition of compensation was not considered in *Adrian School Dist* because the case entailed a time period before the amendment's effective date, the framework for evaluating whether an item qualifies as compensation is still fitting.²

In this case, the Board determined that the reimbursement of petitioner's FICA taxes through quarterly payments to petitioner and the payments to petitioner covering the purchase of service credit were other fringe benefits, which are expressly excluded from the statutory definition of compensation under MCL 38.1303a(3)(d). This determination is supported by the terms of petitioner's own employment contract with the school district. Paragraph 6 of petitioner's employment contract states that

[t]he Administrator shall receive, during the term of this Agreement, the *fringe benefits* set forth in Appendix B attached hereto and incorporated herein by reference.

The clause setting forth the school district's obligations with respect to payments for service credit purchases and for FICA tax reimbursements is contained in the referenced Appendix B, which is labeled "Fringe Benefits."

In *Dignan, supra*, the petitioner's employment contract with the Milan Public Schools contained a provision entitled "Terminal allowance," which obligated the school district to pay the petitioner \$2,000 for each year of service as an administrator for the school district at the termination of her employment. *Dignan, supra* at 572-573, 578. The Michigan Public School Employees Retirement System refused to consider the \$14,500 payment made pursuant to that provision when calculating the petitioner's final average compensation. *Id.* at 573-574. The petitioner challenged the agency's decision, asserting that the termination allowance qualified as longevity pay and was thus compensation under the PSERA. The agency's board found that the termination allowance was not compensation for purposes of calculating final average compensation. The circuit court reversed the board's decision. *Id.* at 574-575. On appeal, this Court reversed the circuit court and reinstated the agency's determination, stating:

¹ We note that MCL 38.1303a(1) prefaces and conditions the language defining compensation with the phrase, "Except as otherwise provided in this act," which directs attention to the exceptions in subsection 3.

² Respondent correctly points out that the statutory definition construed by our Supreme Court was rewritten and recodified through an amendment effective in 1996. 1996 PA 268; *Ronan v Michigan Pub School Employees Retirement Sys*, 245 Mich App 645, 649 n 2; 629 NW2d 429 (2001). Respondent asserts that the recodification narrowed the definition of compensation and, therefore, the circuit court's conclusion that the term compensation must be applied "broadly" is legally inaccurate.

We find additional error in the circuit court’s misapprehension and gross misapplication of the substantial evidence test to respondent’s findings. The evidence supports respondent’s decision. The clear, unambiguous contract language characterized the disputed payment as a “Terminal allowance.” The amendment to ¶ 15 left in place the requirement that the \$2,000 a year payment be treated as a terminal allowance. Nothing in the plain language of the contract suggests the amount should instead be considered longevity pay. When the terms of a contract are unambiguous, the meaning of the contract is interpreted from the language alone. The fact that the school district did not treat the \$14,500 payment as longevity pay is consistent with the contract’s unambiguous language. Given that respondent’s decision was supported by competent, material, and substantial evidence, the circuit court was prohibited from substituting its discretion for that of respondent, even if the court might have reached a different result. [*Id.* at 578-579 (citations omitted).]

Pursuant to *Dignan*, clear and unambiguous contract language controls the characterization of a particular payment.

Moreover, unless defined in the statute, every statutory word or phrase should be accorded its plain and ordinary meaning and a dictionary may be consulted for this purpose. *Ernsting v Ave Maria College*, 274 Mich App 506, 512; 736 NW2d 574 (2007). Although the PSERA does not define “fringe benefits,” *Random House Webster’s College Dictionary* (2001), defines “fringe benefit” as “[a] benefit, such as free life or health insurance or a pension, received by an employee in addition to regular pay.” The reimbursements for FICA taxes and the payments to cover the purchase of service credit fit this definition.

Because petitioner’s employment contract clearly characterizes the payments at issue as “fringe benefits,” and because such a characterization is consistent with the common dictionary meaning of that term, the Board’s treatment of the payments as such is supported by competent, material, and substantial evidence.³

³ We acknowledge petitioner’s arguments that reliance on the labeling found in the employment contract places form over substance and that some of the benefits labeled as “fringe benefits” are expressly included in the definition of compensation under MCL 38.1303a and were considered in calculating petitioner’s final average compensation. These arguments, however, do not compel a holding to affirm, given that some weight must be afforded to the express use of the term “fringe benefits” in the contract and that the benefits at issue fit cleanly within the dictionary definition of “fringe benefit.” Keeping this in mind, there was certainly adequate evidence to support the Board’s findings, where less than a preponderance of evidence is necessary. Indeed, the characterization of the relevant benefits as “fringe benefits” in the employment contract and the existing statutory language specifically excluding fringe benefits from consideration should have provided petitioner with some insight at the time the contract was negotiated that the benefits might not be considered for purposes of calculating his retirement pay.

Furthermore, agency interpretations of statutes are entitled to “respectful consideration and, if persuasive, should not be overruled without cogent reasons.” *SBC Michigan v Pub Service Comm*, ___ Mich ___; ___ NW2d ___ (Docket Nos. 134493 and 134500, decided July 23, 2008), slip op at 19. Courts should be reluctant to overrule longstanding agency interpretations of a statute. *Id.*, slip op at 17 n 46; *Catalina Marketing Sales Corp v Dep’t of Treasury*, 470 Mich 13, 23-24; 678 NW2d 619 (2004). An agency’s interpretation can be particularly helpful for doubtful or obscure provisions, “[b]ut, in the end, the agency’s interpretation cannot conflict with the plain meaning of the statute.” *SBC Michigan, supra*, slip op at 19.

Here, respondent has consistently interpreted the PSERA as excluding both types of payments in question from the statutory definition of compensation, and that interpretation does not conflict with the plain meaning of the statute. Respondent’s interpretation, although not binding on the courts, is entitled to respectful consideration. *Id.*

The Board also found that the service credit and FICA payments were excluded from the definition of compensation under MCL 38.1303a(3)(e) because they were intended for the purpose of increasing petitioner’s final average compensation. Although petitioner argues that there is no record support for this finding, the evidence showed that these payments were only made during petitioner’s final three years, which were the same years that were used to calculate his final average compensation, MCL 38.1304(12). Moreover, although petitioner historically had enjoyed salary increases of two to three percent a year, the payments resulted in a 25 percent increase in petitioner’s total compensation for those final three years. The Board could properly infer from this evidence that the payments were intended for the purpose of increasing petitioner’s final average compensation, thereby excluding them from the statutory definition of compensation.

In light of our ruling above, it is unnecessary to address the additional numerous grounds cited by the Board in rejecting petitioner’s claims.

In sum, the Board’s findings that the service credit and FICA payments were intended as fringe benefits and for the purpose of increasing petitioner’s final average compensation are supported by competent, substantial, and material evidence on the whole record. The circuit court misapprehended and misapplied the substantial evidence test to the Board’s factual findings, and we are left with a definite and firm conviction that the circuit court was mistaken in its findings. Further, because the payments are expressly excluded from the statutory definition of compensation, the Board’s decision was not contrary to law. The circuit court was prohibited from substituting its judgment for that of the Board. Accordingly, we reverse the circuit court’s decision and reinstate the decision of the Board.

Reversed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald