

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

EDWARD ROSS,  
Appellee,

Case No. 2025-217976-AA  
Hon. Cheryl A. Matthews

v

CITY OF TROY,  
Appellant.

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This matter is before the Court on Appellant City of Troy's (Troy) claim of appeal of the September 12, 2025 Decision issued by General Division Administrative Law Judge Thomas Halick (ALJ) from the Michigan Office of Administrative Hearings, Department of Licensing and Regulatory Affairs. The ALJ issued the Decision following a March 25, 2025 evidentiary hearing on Edward Ross's (Ross) Complaint of Unlawful Political Activity against Troy for violating Section 3 of the Political Activities by Public Employees Act (PAPE Act or Act), MCL 15.401 *et seq.*

In his Complaint, Ross alleged that Troy terminated his employment with the Troy Fire Department when he ran for Troy City Council, in violation of MCL 15.403, which provided that he, as a local governmental employee, was allowed to run for a local elective office without taking a leave of absence. Troy asserted that relief under MCL 15.401 *et seq* is limited to employees, and Ross was a volunteer firefighter, not an employee.

The ALJ opined that the principal issue was whether Ross was Troy's employee, for if Ross was an employee, the facts clearly established that Troy's termination of Ross violated the PAPE Act. Applying the common law economic reality test, the ALJ found that Ross established that he was a public employee for purposes of the PAPE Act. The ALJ further found that Troy violated Ross's rights under the PAPE Act by terminating him; thus, Ross was entitled to retroactive reinstatement of his position as a volunteer firefighter, full service credit toward Troy's Firefighters Incentive Plan (FIP) and Firefighters Incentive Trust (FIT), and reasonable attorney fees.

Having carefully reviewed the parties' briefs and record on appeal, and dispensing with oral argument, the Court affirms.

## **I. BACKGROUND**

The underlying facts in this case are not in dispute. Both parties agree that the issues in dispute are whether the ALJ applied the correct standard in determining whether Ross was Troy's employee and whether Ross established that he was an employee. Accordingly, the Court recounts the most relevant background facts and procedural history as succinctly as possible.

On or about February 13, 2019, the Chief of the Troy Fire Department (TFD) offered Ross a position as a volunteer firefighter with the TFD. This position required completing training programs, certification, passing a medical examination and physical agility test, availability for calls 108 hours per week, meeting minimum attendance requirements of 50% of calls when available, 15 hours of station training per quarter, 80 hours of training annually, operating all fire apparatus and equipment, carrying out all assigned tasks, and participation in community engagement opportunities.

Ross completed the required training, examinations, and probation and became a regular volunteer firefighter in January 2021. From 2019 to 2021, Ross responded to approximately 90% of calls when he was available. Ross responded to about 10 calls per month. The time for each call ranged from 15 minutes to 15 hours. He also completed about 1 hour of training per week and was on call approximately 54 hours per week.

As noted in Ross's offer letter, volunteer firefighters received no direct monetary compensation. However, if volunteer firefighters met the minimum requirements set by TFD policy directives they become eligible for payments from a plan (more fully explained below) meant to show appreciation to and encourage retention of volunteers with the TFD. If the firefighters failed to meet the minimum requirements, they would forfeit incentive service credits towards the plan, be

subject to reduced incentive credit rates, and could be subject to disciplinary action, including possible dismissal from the TFD. (TFD Policy Directive 103.07, 2.1.4.2 and 105.01).

Troy established its first volunteer-firefighters incentive plan in 1980 (City of Troy Plan for Volunteer Firefighters). In 2014, Troy established the City of Troy Incentive Trust for Volunteer Firefighters. Troy closed the plan and trust, of which Ross was a beneficiary, on or about April 17, 2023. As a result of the closures, Troy paid Ross \$22,856.00, which was based on his age and total credited service as of April 30, 2023. Troy also issued Ross a W-2 stating the payment was “wages, tips, or other compensation.”

Subsequently, Troy created new incentive plans: the City of Troy Firefighters Incentive Plan (FIP) and City of Troy Firefighters Incentive Trust (FIT). These plans became effective May 1, 2023. Under the new plan, after 10 years of service, a firefighter became entitled to a lump sum of \$75,000.<sup>1</sup> TFD firefighters become eligible for additional payments for additional years of service: lump sum payments of \$75,000 for each additional 5 years of service after 10 years of service, up to \$300,000 (or \$15,000 per each full year of service).

In 2023, Ross ran for Troy City Council while he was on leave from the TFD due to injury. On or around July 24, 2023, TFD Chief Peter Hullinger sent Ross a letter notifying Ross that, under Troy policy, Ross was prohibited from seeking, being elected to, or holding any elective position in Troy. However, the letter noted that Ross would be able to re-apply with the TFD so long as he was not in conflict with TFD policies or the City Charter or laws. Ross was not elected, and he remained with the TFD.

On or about April 16, 2024, Ross again ran for Troy City Council in a special election. On or about May 1, 2024, Chief Hullinger sent Ross a letter terminating Ross’s employment with and precluding him from future employment by the TFD for violating TFD Policy 1003.4.2, which

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<sup>1</sup> Troy provided the \$75,000 figure in its brief on appeal. The ALJ found the figure was 60% of \$75,000 based on

governs political activity and incorporates Troy Administrative Memo 1-P-23, which regulates political activity of Troy personnel and resources. These policies prohibit all Troy personnel from (among other limitations) “[f]iling/applying as a candidate for or holding an elective City of Troy municipal office.” Policy 1003.4.2 further prohibits members of the TFD from seeking or holding any elective position within Troy government.

On June 13, 2024, Ross filed a Complaint against Troy, alleging Troy violated the PAPE Act when Chief Hullinger terminated him for running for City Council. Troy responded that the PAPE Act did not apply to Ross, who was a volunteer firefighter, not an employee, of the TFD.

On March 25, 2025, an evidentiary hearing was held, which resulted in the September 12, 2025 Decision that Troy now appeals.

On appeal, Troy asserts that the ALJ erred by not considering federal law that directly addresses whether a volunteer firefighter constitutes an employee; instead, applying the common law economic reality test, which is generally used to supplement Michigan statutes that treat employees different from independent contractors. Troy relies on the FLSA (29 USC 201 *et seq*) and its related federal regulations (29 CFR 553.104 and 553.106) and cases to support its argument that a volunteer is not an employee if they donate hours of service for civic or humanitarian reasons “with no promise, expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees[.]”

Troy points to Ross’s offer letter, which advised that there would be no direct compensation for the position, and that Ross had a full-time job and did not depend on his volunteer firefighter position for his economic livelihood, which is dispositive of the issue that he is a volunteer and not an employee, citing *Acosta v Cathedral Buffet Inc*, 887 F3d 761, 767 (CA 6, 2018). Troy urges that the motivation for volunteering is essential and must be evaluated before any economic factors. Troy

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Ross’s brief but noted that Ross testified the \$75,000 figure.

further urges that any payment Ross received or might have received should be considered in terms of an hourly wage and whether it is greater than 20% of the prevailing wage, citing *Mendel v City of Gibraltar*, 727 F3d 565 (CA 6, 2013). Essentially, Troy breaks down Ross’s potential compensation and asserts that it fails to meet the 20% standard. Troy concludes that the evidence established that Ross volunteered for civic reasons, without expectation of compensation, and that any payment Ross may have received was not tied to production. Thus, the ALJ applied the wrong standard, and Ross cannot establish that he was an employee. On this basis, Troy asks this Court to reverse the ALJ’s decision and dismiss Ross’s Complaint based on lack of jurisdiction.

Ross responds that the economic reality test has been used to determine employee status under many legal scenarios, which the ALJ recognized by citing cases, not for their direct factual application, but to recognize this test as a common tool for determining whether there was an employer-employee relationship. Ross further responds that Troy does not provide any case law to support that federal law should control over the economic reality test, and, regardless, Ross would be considered an employee under the federal regulations cited by Troy because Ross and TFD volunteer firefighters provide services with the promise and expectation that they will receive compensation for those services. Ross notes that 29 CFR 553.106(f) even references the total amount of payments made “in the context of the economic realities of the particular situation.” Ross asserts that the incentive plan is to retain firefighters and amounts to direct compensation. The ALJ found that the amounts from the incentive plan were not nominal, and Ross urges that this Court may not set aside the ALJ’s decision if it is supported by the record. On this basis, Ross asks this Court to affirm the ALJ’s decision.

## **II. STANDARD OF REVIEW**

“A litigant seeking judicial review of an administrative agency’s decision has three potential avenues of relief: (1) the method of review prescribed by the statutes applicable to the particular

agency; (2) the method of review prescribed by the” Administrative Procedures Act (APA), MCL 24.201 *et seq*; or (3) an appeal under MCL 600.631. *Jackson Community College v Michigan Dept of Treasury*, 241 Mich App 673, 678-679; 621 NW2d 707 (2000). The parties agree that review under the APA, MCL 24.306, provides the appropriate standard of review for the instant appeal.

Under MCL 24.306, “[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.” *Dignan v Michigan Pub Sch Emps Ret Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). Legal questions, such as whether “the agency’s decision is in violation of the constitution or a statute or in excess of the statutory authority or jurisdiction of the agency” are reviewed *de novo*.” *Nairne v Dept of Envt, Great Lakes, & Energy*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2026) (Docket No. 367091); slip op at 4 (cleaned up). However, “[a]n agency decision may also be set aside if it is not supported by competent, material and substantial evidence on the whole record[,]” which “concerns the agency’s factual determinations” to which “the circuit court applies the substantial evidence test.” *Id.* (cleaned up). “Substantial evidence is the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion and consists of more than a scintilla of evidence, but it may be substantially less than a preponderance.” *Id.* (cleaned up). This standard is “indistinguishable from the clearly erroneous standard of review.” *Id.* (cleaned up). Accordingly, “[w]hen reviewing the decision of an administrative agency for substantial evidence, a court should accept the agency’s findings of fact if they are supported by that quantum of evidence” and should “not set aside findings merely because” substantial evidence on the record could support alternative findings. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

### III. ANALYSIS

Under the PAPE Act, MCL 15.406, an employee may file a complaint against their employer if the employee believes that the employer violated the Act. Here, Ross alleges that Troy violated MCL 15.403(1)(c), which permits an employee of a political subdivision to become a candidate for elective office without first obtaining a leave of absence, when Troy terminated him when he ran for City Council. Troy asserts that Ross was a volunteer firefighter, not an employee, and that the ALJ improperly applied the economic reality test over on-point federal authority to determine whether Ross was an employee. Troy additionally asserts that the ALJ's finding that Ross was an employee, despite his nominal potential compensation, was not supported by substantial evidence on the record.

**1. Did the ALJ err by ignoring federal authority and applying the common law economic reality test?**

The PAPE Act defines a “public employee” as “an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.” There is no dispute that the Act does not define the term “employee” and that the ALJ had to look outside of the statute to determine whether Ross was an employee under the Act.

While Troy urged the ALJ to rely on provisions of the Fair Labor Standards Act (FLSA) to determine whether Ross was an employee or volunteer, the ALJ “decline[d] to import the very specific provisions of the FLSA” where the cases cited were not persuasive, and the Michigan legislature had not provided any specific guidance. Rather, the ALJ looked to Michigan authority to apply to this novel issue and relied on the economic reality test to determine whether Ross was Troy's employee.

In *Meridian Mut Ins co v Wypij*, 226 Mich App 276, 279-281; 573 NW2d 320 (1997), our Court of Appeals, recognizing that it had never before “used the economic reality test in cases involving construction of a private contract” upheld a trial court's reliance on the economic reality

test to determine whether an injured party was an “employee” where the term was not defined in a general insurance contract. The Court of Appeals recognized that the economic reality test has been applied to various types of cases where the terms “employee” or “employer” were not defined by the governing statute:

[w]hile the economic reality test has generally been applied to claims brought under the WDCA, this Court has also applied it in other circumstances. See, e.g., *Chilingirian v City of Fraser*, 194 Mich App 65, 69–70; 486 NW2d 347 (1992), remanded to the Court of Appeals 442 Mich 874; 500 NW2d 470 (1993), opinion on remand 200 Mich App 198; 504 NW2d 1 (1993) (economic reality test used to determine whether the plaintiff was an employee under the Whistleblowers' Protection Act); *Citizens Ins Co of America v Auto Club Ins Ass'n*, 179 Mich App 461, 464–465; 446 NW2d 482 (1989) (economic reality test is the appropriate standard to determine the existence of an employment relationship under the no-fault act); *McCarthy v State Farm Ins Co*, 170 Mich App 451, 454–456; 428 NW2d 692 (1988) (economic reality test was appropriate to determine whether the defendant was an “employer” of the plaintiffs under the Civil Rights Act); *Imbrunone v. Inkster Public Schools*, 161 Mich App 132, 135–136; 410 NW2d 300 (1987) (economic reality test was appropriate to determine which school districts were the petitioner's employers for purposes of the teacher tenure act). [*Id.* at 280-281].

On this basis, and finding that the “test properly aided the trial court in determining” whether the party was an employee, the Court of Appeals “conclude[d] that the test properly focuses on the characteristics of an employer-employee relationship, regardless of the context in which it is applied.” *Id.*

“The economic reality test involves four basic factors: (1) control of the worker's duties; (2) payment of wages; (3) the right to hire, fire, and discipline; and (4) performance of the duties toward the accomplishment of a common goal.” *Id.* at 280. “In applying these factors, the totality of the circumstances surrounding the work must be examined, with no single factor controlling.” *Id.* This Court finds that these factors would be relevant to and did, in fact, aid the ALJ in determining whether Ross was Troy’s employee. Notably, even 29 CFR 553.106(f), which regulates the payment

of expenses and benefits to volunteers when applying the FLSA to state and local government employees, references the “economic realities of the particular situation”:

Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers under the FLSA can only be determined by examining the total amount of payments made (expenses, benefits, fees) *in the context of the economic realities of the particular situation*. [emphasis added].

Troy focuses on 29 CFR 552.104(a) and other subsections of 553.106 to support its argument that individuals who donate hours of service with no expectation of compensation, except for reimbursement for expenses, reasonable benefits, or nominal fees, are volunteers and that volunteers may receive a pension or length of service plan as a “reasonable benefit” or “a nominal fee,” provided that it is not tied to productivity, and not lose their volunteer status. However, the focus of these provisions is to protect a volunteer from losing their volunteer status within the context of the FLSA. Here, the ALJ was considering protection of public employee rights under the PAPE Act.

In support of the decision to apply the economic reality test, the ALJ opined that the PAPE Act is remedial in nature as “providing a means to enforce rights or redress injuries” (citing *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 235; 761 NW2d 284 (2008), similar to MIOSHA and the Payment of Wages and Fringe Benefits Act, to which Michigan Courts have applied the economic reality test. The ALJ further noted that whether a person was an employee for purposes of the PAPE Act would not be determinative as to whether they were an employee under other contexts, explaining that Section 1 of the Act expressly limits its definition of “public employee” to the Act, so that different public policy goals would not be affected. This Court finds no error in the ALJ’s finding federal law unpersuasive in determining the instant issue and relying, instead, on the economic reality test.

The ALJ’s reliance on a common law test used by Michigan courts in a variety of circumstances was not contrary to any statute, Constitution, or Michigan authority. That the test has

not yet been applied in Michigan to distinguish a volunteer from an employee for purposes of the PAPE Act does not mean its usage was an error of law. While federal authority cited by Troy may have offered a standard to use for distinguishing volunteers from employees, this authority was derived from a federal statute with a purpose that is distinguishable and unrelated to the PAPE Act. Thus, the Court concludes that the ALJ did not err in relying on the economic reality test.

**2. Did the ALJ err by concluding that Ross established that he was an employee?**

Again, the underlying facts and relevant policies are undisputed. It is also largely undisputed that Ross was required to meet minimum requirements and perform certain duties set by the TFD, that the TFD had a discipline policy and the right to hire or fire volunteer firefighters, and that volunteer firefighters' duties were performed to accomplish a common goal.<sup>2</sup> Regardless, the Court finds that the ALJ's conclusions that Troy exercised substantial control over Ross's duties and that Troy had the right to hire, fire, and discipline TFD volunteer firefighters are supported by the record. As found by the ALJ, Ross had to meet training requirements and tests to become a firefighter and continued minimum training, response, and availability requirements to be eligible for the incentive plan and avoid discipline and termination. This included having to be available for calls 108 hours per week and responding to at least 50% of the incident calls for which he was available. There is no reasonable dispute that TFD policies gave Troy the right to discipline or terminate for failing to meet requirements. There is also no reasonable dispute that TFD volunteer firefighters were essential to providing firefighting services to citizens of Troy.

The main dispute is whether payments and potential future payments from the TFD VIP and VIT constitute nominal pay or were sufficient for Ross to establish that he was a TFD employee. The ALJ relied on *MIOSHA v Yoder Family Farm*, 343 Mich App 77, 90; 996 NW2d 808 (2022) to

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<sup>2</sup> Troy's appeal and underlying arguments primarily focus on the wages/compensation or nominal fee/reasonable benefit argument under the PAPE Act.

establish that something other than an hourly wage or salary, such as an implied compensation agreement or compensation received primarily through benefits other than cash, can constitute “wages” for purposes of the economic reality test. The ALJ then noted that the purpose of the TFD incentive plan was to “reward the valuable service of the volunteer fire fighters [sic]” and concluded that the original and current TFD incentive plans “constitute *valuable consideration* that is compensation for services rendered by the volunteer firefighters.”

Troy argues that Ross had no expectation or promise of compensation and that any payment that he received was nominal and contingent. However, the ALJ found that “Troy’s volunteer firefighters worked under the expectation that they would earn money under the 2014 Incentive Plan” and when the plan was closed, payments were made based on age and years of service. The ALJ further found that “[h]ad [Ross] not been terminated, he would have been entitled to \$4,500.00 under the new incentive plan for his service from May 1, 2023 to May 1, 2024, and that Ross would have been eligible, had he not been terminated, for additional \$75,000 lump sums for additional years of service, up to \$300,000. This Court would also note that the record supports Ross’s failure to meet the minimum requirements set by TFD directives (minimum available hours, training hours, and response to incidents) would have impacted (decreased) his compensation under the incentive plans. Accordingly, the Court finds that the record contains sufficient evidence—an amount that a reasonable mind would accept as sufficient to support the ALJ’s conclusion—that Ross was entitled to a form of compensation through the TFD incentive plan, which was more than nominal and satisfied the “payment of wages” factor in the economic reality test. This Court will not set aside the ALJ’s findings and conclusion merely because substantial evidence on the record could support alternative findings. See *In re Payne*, 444 Mich at 692.

The Court finds that the ALJ's conclusion, after applying the factors in the economic reality test, that Ross established by a preponderance of the evidence that he was a "public employee" for purposes of the PAPE Act comports with the law and is supported by substantial evidence on the record. Likewise, since Ross established that he was Troy's public employee, the Court finds no error in the ALJ's conclusion that Ross established by a preponderance of the evidence that Troy violated the PAPE Act when it terminated Ross for running for City Council. The language of the Act is clear, and the record supports that there is no dispute that Ross was terminated because of his decision to run for City Council.

#### **IV. CONCLUSION**

Based on the foregoing opinion, the Court concludes that there was no error of law, and the ALJ's decision was supported by substantial evidence on the record.

WHEREFORE, IT IS HEREBY ORDERED that the September 12, 2025 ALJ Decision is AFFIRMED.

**IT IS SO ORDERED.**

This order resolves the appeal and this Court does not retain jurisdiction.

/s/ Cheryl Matthews

May 27, 2026

Hon. Cheryl A Matthews rf

Circuit Court Judge

