STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: September 3, 2014]

KELVIN RAMIREZ	:	
A/K/A KEVIN RAMIREZ	:	
	:	
v.	:	**C.A. No. PC 2012-3071**
	:	
RHODE ISLAND DEPARTMENT	:	
OF LABOR AND TRAINING, by and	:	
through its Director, and	:	
DELTA AIRLINES, INC.	:	

MARCIE LAPORTE	:	
	:	
v.	:	**C.A. No. PC 2012-3072**
	:	
RHODE ISLAND DEPARTMENT	:	
OF LABOR AND TRAINING, by and	:	
through its Director, and	:	
DELTA AIRLINES, INC.	:	

SANDRA CARTER	:	
	:	
v.	:	**C.A. No. PC 2012-3073**
	:	
RHODE ISLAND DEPARTMENT	:	
OF LABOR AND TRAINING, by and	:	
through its Director, and	:	
DELTA AIRLINES, INC.	:	

KIMBERLY CLAYMAN	:	
	:	
v.	:	**C.A. No. PC 2012-3074**
	:	
RHODE ISLAND DEPARTMENT	:	
OF LABOR AND TRAINING, by and	:	
through its Director, and	:	
DELTA AIRLINES, INC.	:	

ROBIN BRINDLE	:	
	:	
v.	:	**C.A. No. PC 2012-3075**
	:	
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, by and through its Director, and DELTA AIRLINES, INC.	:	

KATHLEEN BROWN	:	
	:	
v.	:	**C.A. No. PC 2012-3076**
	:	
	:	
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, by and through its Director, and DELTA AIRLINES, INC.	:	

DECISION

MCGUIRL, J. Before this Court are six consolidated appeals from decisions of the Rhode Island Department of Labor and Training[1] (DLT), in which the DLT issued decisions determining that the Director of the DLT could not exercise jurisdiction over the disputes due to federal preemption under the Airline Deregulation Act of 1978 (ADA). 49 U.S.C. app. §§ 1301, et seq. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth in this Decision, this Court reverses the decisions of the DLT and remands them to the DLT for findings of fact.

[1] Plaintiffs filed a motion to consolidate on September 18, 2012 and Defendant did not object. Thereafter, Judge Matos granted Plaintiffs' motion to consolidate matters PC-2012-3071, PC-2012-3072, PC-2012-3073, PC-2012-3074, PC-2012-3075, and PC-2012-3076.

I

Facts and Travel

The Petitioners in this matter were employees of Delta Airlines, Inc. (Delta), at Delta's facility at the T.F. Green Airport in Warwick, Rhode Island. The Petitioners filed Complaints with the DLT between September 6 and September 13, 2011, alleging that Delta had violated the provisions of G.L. 1956 § 25-3-3, "Work on Sundays or holidays." Specifically, the Petitioners assert that Delta violated § 25-3-3 by failing to pay Petitioners one and one-half times their normal rate of pay for work performed on Sundays and holidays.

The DLT held a hearing on these matters before Hearing Officer Ellen McQueeney Lally (Hearing Officer) on May 9, 2012. During that hearing, Delta asserted that all complaints should be dismissed because § 25-3-3 was preempted by the ADA, 49 U.S.C. § 40101(a)(12).[2] On May 18, 2012, the Hearing Officer issued decisions for each Petitioner's claim.[3] The Hearing Officer, DLT Director's designee, declared that § 25-3-3 could not be applied against Delta. (Hearing Officer's Decision at 3.) Specifically, the Hearing Officer explained that the wages of airline employees are related to prices, routes, and services within the meaning of the ADA. Id. Accordingly, the Hearing Officer held that the DLT was "preempted from enforcing wage laws for airline employees" and that the DLT had no jurisdiction to adjudicate the Petitioners' claims. Id.

Thereafter, Petitioners filed timely appeals pursuant to § 42-35-15. The Petitioners moved to consolidate their appeals into one action because each case presented identical legal

[2] At the hearing, the Hearing Officer addressed the Petitioners and stated that "[Delta's Counsel] [had] submitted to the DLT, a letter along with some case law alleging or indicating that he believes that this matter is something that state law cannot impact." (Hr'g Tr. at 3.)

[3] The DLT issued six separate decisions; however, the decisions were indistinguishable in substance—the only difference being the date that each complaint was originally filed.

issues. See Super. R. Civ. P. 7(b)(3)(ii). The DLT and Delta did not object to consolidation, and the motion was granted by this Court on or about October 3, 2012. The parties submitted memoranda. Following a chamber pretrial conference on July 30, 2013, this Court requested briefing from both parties regarding Petitioners' demand that the Court disregard an Affidavit submitted by Delta as an exhibit to its Memorandum of Law filed February 25, 2013.[4] Thereafter, Delta requested that this Court allow it to withdraw the Affidavit as an exhibit on August 7, 2013. The Petitioners filed a response to Delta's Motion to Withdraw Exhibit on August 16, 2013.[5]

II

Standard of Review

This Court's review on appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedure Act, §§ 42-35-1, et seq. See Rossi v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). This Court may reverse, modify, or remand an agency's decision if "substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

> "(1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error or law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. § 42-35-15(g).

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[4] Affiant is Vincent Joshua Maxwell, the Airport Customer Service Time and Attendance Manager for Delta.

[5] Substantively, Petitioners assert that this Court cannot consider the Affidavit because the Affidavit was not submitted at the hearing before the DLT, was not part of the certified administrative record, and constitutes inadmissible hearsay.

This Court's review of an agency decision is, in essence, "an extension of the administrative process." R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994).

In reviewing an agency decision, this Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). This Court will defer to an agency's factual determinations so long as they are supported by legally competent evidence. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). Our Supreme Court has defined legally competent evidence as "some or any evidence supporting the agency's findings." Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (citation omitted). "[I]f 'competent evidence exists in the record, [this] Court is required to uphold the agency's conclusions.'" Auto Body Ass'n, 996 A.2d at 95 (quoting R.I. Pub. Telecomms. Auth., 650 A.2d at 485).

However, a judicial officer may reverse such findings in instances wherein the conclusions and the findings of fact are "totally devoid of competent evidentiary support in the record," Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981), or from the reasonable inferences that might be drawn from such evidence. Guarino v. Dep't of Soc. Welfare, 122 R.I. 583, 588–89, 410 A.2d 425, 428 (1980). "An administrative decision which fails to include findings of fact required by statute cannot be upheld. Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council, 536 A.2d 893 (1988). A Superior Court justice has some discretion in fashioning a remedy when hearing an appeal from agency decision. Birchwood Realty, Inc. v. Grant, 627 A.2d 827 (1993). A reviewing court will neither search record for supporting evidence nor will it decide for itself what is proper in the circumstances, but will either order hearing de novo or remand in order to afford agency an opportunity to clarify and complete its

decision. Hooper v. Goldstein, 104 R.I. 32, 241 A.2d 809 (1968). Under the Administrative Procedure Act, the Superior Court has authority to remand for taking of further evidence. Lemoine v. Dep't of Mental Health, Retardation and Hospitals, 113 R.I. 285, 320 A.2d 611 (1974).

In contrast to its review of findings of facts, this Court reviews agency determinations of law de novo. Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). In general, this Court will accord deference to an agency's interpretation of '"a statute whose administration and enforcement have been entrusted to the agency."' Town of Richmond v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 151, 157 (R.I. 2008) (quoting Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2005)). However, "[d]eference is not owed when the agency has completely failed to address some factor[,] consideration of which[,] was essential to [making an] informed decision." See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 422 F.3d 782, 798 (9th Cir. 2005).

III

Background of § 25-3-3

Section 25-3-3, like other Sunday closing laws[6], was enacted pursuant to the "police power to preserve the health, safety and welfare of its citizens." Dilloff, Never on Sunday: The Blue Laws Controversy, 39 Md. L. Rev. 679 (1980).[7] In City of Warwick v. Almacs, 442 A.2d 1265, 1270 (R.I. 1982), the Rhode Island Supreme Court concluded that "the clear objective of

[6] Sunday restrictions were first called "blue laws" during the colonial period. Lesley Lawrence-Hammer, Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws (citing Under the Establishment Clause, 60 Vand. L. Rev. 1273, 1306 (2007); David N. Laband & Deborah Hendry Heinbuch, Blue Laws: The History, Economics, and Politics of Sunday-Closing Laws 8 (1987)).

[7] "These statutes are an ancient institution in American law . . . [;] [however,] they are embattled by widespread efforts to repeal or invalidate them or to avoid their application, often initiated by large retail corporations." 10 ALR 4th 246 (originally published in 1981).

Rhode Island's closing law is to promote a common day of rest and recreation." This decision embraces the United States Supreme Court's view that Sunday closing laws serve clearly secular purposes: "set[ting] one day apart from all others as a day of rest, repose, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together." McGowan v. Maryland, 366 U.S. 420 (1961). The Rhode Island legislature effectuated this purpose, in part, by drafting § 25-3-3(a)[8], which requires employers to pay their employees at least one and one-half times their normal rate of pay for work conducted on Sundays and holidays. The legislature further realized their goal of promoting a common day of rest and recreation by drafting and passing § 25-3-3(a)(1)[9], which provides that an employee cannot be discharged or otherwise penalized for refusing to work on Sundays or holidays enumerated within Chapter 25.[10]

IV

DLT's Decisions

In 1978, Congress enacted the ADA. 49 U.S.C. app. §§ 1302(a)(4), 1302(a)(9). The ADA essentially deregulated domestic air transport in order "[t]o ensure that the States would not undo federal deregulation with regulations of their own." Morales v. Trans World Airlines, Inc., 504 U.S. 374, 378 (1992). In addition, the ADA included a preemption clause which read in relevant part: "[N]o State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air

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[8] "Work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 ½) times the normal rate of pay for the work performed . . . ." Sec. 25-3-3(a).

[9] ". . . [I]t is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter. . . ." Sec. 25-3-3(a)(1).

[10] Holidays include Sunday, New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Memorial Day, Fourth of July, Victory Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

carrier . . . ." 49 U.S.C. app. § 1305(a)(1). Reenacting Title 49 of the U.S. Code in 1994, Congress revised this clause to read: "[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . ." Sec. 41713(b)(1).[11] In the instant matter, the DLT found that the wages of airline employees were related to prices, routes, and services as contemplated by the language of the ADA. (Hearing Officer's Decision at 3.) The Hearing Officer determined that it was unnecessary to take testimony or receive evidence because the issue was a question of law.[12] The DLT, therefore, declared that it was without jurisdiction to adjudicate the claims and dismissed each claim.

V

Issues Presented for Review

At issue is whether the ADA preempts § 25-3-3(a)'s mandate of payment of time-and-one-half of an employee's normal wage rate on Sundays and holidays. A threshold matter is whether § 25-3-3(a)(1), which permits employees the right to refuse to work on Sundays and holidays, without incurring disciplinary action, is at issue in the case at bar. This Court finds that § 25-3-3(a)(1)'s right of refusal is not relevant to the instant matter as Plaintiffs have not asserted that they have said right, nor have they argued that this right would survive preemption.

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[11] Congress intended the revision to make no substantive change. Pub. L. No. 103-272, § 1(a), 108 Stat. 745.

[12] This Court must determine whether the instant matter involves a question of pure law or mixed questions of law and fact. Specifically, this Court must examine whether the record from the DLT's May 9, 2012 hearing is sufficient to determine the issues presented by this controversy.

VI

Preemption

On appeal, Petitioners assert that the DLT's decisions were affected by error of law. Specifically, the Petitioners maintain that the ADA does not preempt § 25-3-3. In response, Delta and the DLT aver that the Hearing Officer properly determined that § 25-3-3 is preempted by the ADA. The Hearing Officer's decisions were based on the federal preemption doctrine.

The foundation of the federal preemption doctrine is Article VI, Clause 2 of the United States Constitution, the Supremacy Clause. Verizon New England Inc. V. Rhode Island Pub. Utils. Comm'n, 822 A.2d 187, 192 (R.I. 2003). Preemption means that "[w]here a state status conflicts with, or frustrates, federal law, the former must give way." CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 663 (1993) (citing U.S. CONST., art. VI, cl. 2; Maryland v. Louisiana, 451 U.S. 725, 746 (1981)). There are three main categories of federal preemption. Verizon New England Inc., 822 A.2d 187 at 192 (citing Shaw v. Delta Airlines, Inc., 463 U.S. 85, 95-96 (1983)). The first, "express preemption," exists when a federal statute "expressly provide[s] that it shall supersede related state law," and that the state law in question "falls within the class of law that Congress intended to preempt." Id. (citing Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 95-97 (1992)). The second, "conflict preemption," exists "when compliance with both federal and state regulations is a physical impossibility [and] when under the circumstances of a particular case, [the state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. (quoting Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963); Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 373 (2000) (internal quotations omitted)). The third, "field preemption," exists if Congress implemented a comprehensive regulatory framework,

thereby indicating that its intention to reserve the area solely for federal control. Id. Field preemption renders any state regulation in that same field invalid. Id.

This Court finds that express preemption applies to these particular circumstances. To determine whether the ADA expressly preempts § 25-3-3, the Court must ascertain whether the ADA "expressly provide[s] that it shall supersede related state law" in the first place. Verizon New England Inc., 822 A.2d at 192. In preemption cases, courts "start with the assumption that the historic police powers of the States were not to be superseded" by a federal statute unless it was the "clear and manifest purpose of Congress" to do so. California v. ARC Am. Corp., 490 U.S. 93, 101 (1989). The Court presumes that "Congress does not cavalierly pre-empt" state law, Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996), particularly when Congress passes a statute "in a field which the States have traditionally occupied." Id. (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (internal quotations omitted)). "If the statute contains an express pre-emption clause, the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." CSX Transp., Inc., 507 U.S. at 664.

In 1978, Congress determined that "maximum reliance on competitive market forces" would best further "efficiency, innovation, and low prices" as well as "variety [and] quality . . . of air transportation services," and enacted the ADA. 49 U.S.C. app. §§ 1302(a)(4), 1302(a)(9). "To ensure that the States would not undo federal deregulation with regulation of their own, the ADA included a pre-emption provision, prohibiting the States from enforcing any law 'relating to rates, routes, or services' of any air carrier." Morales, 504 U.S. at 378-79 (citing 49 U.S.C. app. § 1305(a)(1)). Section 1305(a)(1) expressly preempts the States from "enact[ing] or enforce[ing] any law, rule, regulation, standard, or other provision having force and effect of law

relating to rates, routes, or services of any carrier . . . ." "For purposes of the present case[s], the key phrase, obviously, is 'relating to.'" Id. at 383; see Black's Law Dictionary 1158 (5th ed. 1979) ("[T]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with"). "The ordinary meaning of these words is a broad one . . . and the words thus express a broad pre-emptive purpose." See Morales, 504 U.S. at 383-84; see also Am. Airlines, Inc. v. Wolens, 513 U.S. 219 (1995); Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 364 (2008).

In Morales, the United States Supreme Court likened the language of § 1305(a)(1)'s express preemption clause to a similar express preemption provision contained in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1144(a), which preempts all state laws "insofar as they . . . relate to any employee benefit plan." 504 U.S. at 384.[13] (Emphasis added.) For example, the United State Supreme Court held that the "breadth of [ERISA's express preemption clause's] reach is apparent from [its] language." See id. at 384 (quoting Shaw, 463 U.S. at 95-96); see also Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985) (commenting on the "broad scope" of ERISA's express preemption provision); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987) (finding that the language of ERISA's express preemption clause gives the clause an "expansive sweep" and was "deliberately expansive"). Accordingly, the United State Supreme Court adopted an expansive interpretation of the ADA's express preemption clause because the relevant language of ERISA's express preemption clause was identical: "[S]tate enforcement actions having a connection or reference to airline 'rates, routes, or services' are pre-empted under 49 U.S.C. app. § 1305(a)(1)."

[13] In the FAAA Act's legislative history, Congress endorsed the "broad preemption interpretation" adopted by the Court in Morales. See H.R. Conf. Rep. 103-677, at 83 (1994), reprinted in 1994 U.S.C.C.A.N. at 1755.

Morales, 504 U.S. at 384. Specifically, the Court held that a state law may "relate to the ADA, and therefore run afoul of the ADA's preemption clause, even though such law has only an indirect effect on the rates, routes, or services of an air carrier." See id. at 385-86. However, the Court acknowledged that some state action that may affect an air carrier's fares is "too tenuous, remote, or peripheral a manner" to have preemptive effect. Id. at 390. Moreover, Morales, "express[ed] no views about where it would be appropriate to draw the line." Id.

The United States Supreme Court revisited the issue of where to draw the line in interpreting the ADA's preemptive scope in Wolens. The majority held that state action was preempted to the extent that it imposed its substantive standards on the prices, routes, or services of an air carrier and rejected an interpretation of the ADA's preemption language, limiting preemption to state enactments focusing solely on airlines. Wolens, 513 U.S. at 227-232; see also Morales, 504 U.S. at 386; Rowe, 552 U.S. at 373-76 (rejecting confining preemption to state laws that are aimed at economic regulation as opposed to other state interests). The state laws preempted in Morales, Wolens, and Rowe involved, respectively, deceptive advertising, alleged consumer abuse, and protection of health. Specifically, "[t]he state regimes at issue in Morales and Wolens, although based on generally applicable statutes, involved detailed guidelines crafted by state authorities directed against airlines; the statute in Rowe directly targeted carriers." DiFiore v. Am. Airlines, Inc., 646 F.3d 81, 87 (2011).

With respect to a wage-related state law facing preemption by the ADA, the First Circuit held that the ADA preempted a Massachusetts tips law, which set forth that no employer or other person shall demand or accept from any service employee any payment or deduction from a tip or service charge given to such service employee by a patron. DiFiore, 646 F.3d at 87; 49 U.S.C.A. § 41713(b)(1); M.G.L.A. ch. 149, § 152A(b)(f). In doing so, the Court explained that

the State law directly "related to" how airline services were performed because it attempted to prohibit airlines from instituting a two dollar service charge for bags checked at the airport's curb. However, the First Circuit also referred to a case "declining to preempt [a] state prevailing wage law." Id. (citing Californians for Safe and Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184, 1189 (9th Cir. 1998), cert. denied, 526 U.S. 1060 (1999)) (holding that California's Prevailing Wage Law (CPWL) was not "related to" motor carrier enterprises' prices, routes, and services within meaning of preemption clause of Federal Aviation Administration Authorization Act, and thus the prevailing wage law was not preempted). The First Circuit stated that "the Supreme Court would be unlikely—with some possible qualifications—to free airlines . . . from prevailing wage laws . . . ." DiFiore, 646 F.3d at 87. However, "such measures must impact airline operations—and so, indirectly, may affect fares and services." Id.

The tips law can be distinguished from the prevailing wage laws because "the tips law does more than simply regulate the employment relationship . . . [;] the tips law had a direct connection to air carrier prices and services and can fairly be said to regulate both." Id. Specifically, "the airline's 'price' includes charges for such ancillary services as well as the flight itself." Id. For example, "[t]o avoid having a state law deem the curbside check-in fee a 'service charge' would require changes in the way the service is provided or advertised." Id. at 88. However, the court did not find that state regulation is preempted wherever it imposes costs on airlines and therefore affects fares because costs "must be made up elsewhere, i.e., other prices raised or charges imposed." Id. at 89.

In particular, 49 U.S.C.A. § 41713(b)(1), in pertinent part, provides that "a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . ." (Emphasis added.). However, the ADA

does not preempt any state regulation that affects fares, regardless of the remoteness of the state regulation to the transportation functions protected by the ADA. See Thompson v. U.S. Airways, Inc., 717 F. Supp. 2d 468, 477-79 (E.D. Pa. 2010) (the ADA does not preempt all state employment claims against airlines).[14]

Whether a law is related to prices, routes, or services includes questions of fact; namely, the degree to which wages relate to an air carrier's prices, routes, and services. In reviewing the administrative record, however, this Court finds no determination was made as to what effect enforcing § 25-3-3(a) would have on Delta's prices or how implementing § 25-3-3(a) relates to an air carrier's ability to control its prices, routes, and services. See Sakonnet Rogers, Inc., 536 A.2d at 896 (an administrative decision that fails to include findings of fact required by statute cannot be upheld). Here, the Hearing Officer viewed the question of preemption to be a question of pure law. (Hr'g Tr. at 3); (Hearing Officer's Decision at 3.) However, to ascertain whether or not § 25-3-3(a) is preempted by the ADA, the Hearing Officer would have had to adduce some evidence that Delta employees' wages were related to Delta's rates, routes, or services. See Hooper, 104 R.I. at 44-45, 241 A.2d at 815-16 (holding that a Rhode Island court will not search the record for supporting evidence or decide for itself what is proper, but instead either order a

[14] In Abdu-Brisson v. Delta Airlines, Inc., 128 F.3d 77, 85 (2d Cir. 1997), Delta argued that the ADA preempted plaintiffs' claims because "there [was] a direct relationship between the relief sought and Delta's prices." The Court discussed that air carriers are not sensitive to ordinary pricing structures; rather than being propelled by cost-plus bases, air transportation prices are pushed principally by "yield management systems." Id. "Yield management systems are designed to schedule flights at the maximum capacity possible." Aubrey B. Colvard, Trying to Squeeze into the Middle Seat: Application of the Airline Deregulation Act's Preemption Provision to Internet Travel Agencies, 75 J. Air L. & Com. 705, 725 (2010). Essentially, a yield management system is a unique formula that is mainly controlled by forces of demand and competition, rather than costs. See id. "Thus, because air carrier prices are not driven by common cost bases, things that may appear to affect air carrier prices for the purpose of ADA preemption may in fact only have an insignificant effect." Id.

hearing de novo or remand in order to afford the board an opportunity to clarify or complete its decision).

The Hearing Officer's decisions effectively found that every state statute that can be tied to an air carrier's prices, routes, or services through the use of logic is preempted. See Hearing Officer's Decision at 3 ("[t]hese cases convince me that the wages of airline employees come within the sweep of the 'related to price, route, or service of an air carrier' language of the ADA"). However, the United States Supreme Court has never explicitly held that a state's employee compensation statute is preempted by the ADA. See Gennell v. FedEx Ground Package Sys., Inc., 05-CV-145-PB, 2013 WL 4854362 (D.N.H. Sept. 10, 2013). More recent decisions from the Massachusetts Federal District Court have "expressed skepticism at preemption claims that seek to invalidate . . . [state] wage and hour laws." Massachusetts Delivery Ass'n v. Coakley, CIV-A 10-11521-DJC, 2013 WL 5441726 (D. Mass. Sept. 26, 2013) (citing Martins v. 3PD, Inc., No. 11–11313, 2013 WL 1320454, at 12 (D. Mass. Apr. 4, 2013)); see also Schwann v. FedEx Ground Package Sys., Inc., CIV-A 11-11094-RGS, 2013 WL 3353776 (D. Mass. July 3, 2013) (stating that wage laws may affect price, routes, and services, but that their effect is too "remote").

The indirect economic impact of a state law of general applicability is exactly the tenuous cause-and-effect relationship that the First Circuit held would not trigger preemption. See DiFiore, 646 F.3d at 87. This Court agrees that such a categorical approach is inappropriate and that Delta has failed to demonstrate the effect of § 25-3-3(a) on its prices, routes, or services. See Schwann, 2013 WL 3353776, at *4; see also McGuire v. Reilly, 386 F.3d 45, 57 (1st Cir. 2004) (discussing standard for facial invalidity). The ADA's preemption provision does not have "infinite reach." Martins, 2013 WL1320454, at *12. That a regulation on wages has the

potential to impact costs and therefore prices is insufficient to implicate preemption. See DiFiore, 646 F.3d at 89; see also S.C. Johnson & Son, Inc. v. Transp. Corp. of Am., Inc., 697 F.3d 544, 559 (7th Cir. 2012) ("It is important in this connection to consider whether enforcement of a state law has a generalized effect on transactions in the economy as a whole, or if it affects only particular arrangements."). Those courts that have found that the ADA preempts state and local regulation of the employment relationship have done so on an "as-applied" basis. See, e.g., Sanchez, 2013 WL 1395733, at *13 (considering statute's effect on defendant in isolation).

The Petitioners, Delta, and the DLT heavily rely on DiFiore. However, unlike the Massachusetts tips law that was at issue in DiFiore, the "Work on Sundays and holidays" statute, in relevant part § 25-3-3(a), a direct connection to Delta's prices, routes, or services has not been shown by Delta. Delta produced no evidence to establish the required relationship between its prices, routes, or services and the Plaintiffs' claims. Thus, the Hearing Officer needed to hear, review, and weigh evidence that Plaintiffs' claims have a sufficient connection to its prices, routes, or services to warrant their preemption.

With respect to the effect an employees' right to refuse work on Sundays and holidays would have on Delta's ability to control its prices, routes, and services, Petitioners' have asked this Court to disregard an Affidavit submitted by Delta. (Delta's Aff.). Delta requested that this Court allow it to withdraw the Affidavit as an exhibit on August 7, 2013. Petitioners filed a response to Delta's motion to withdraw on August 16, 2013, asserting that this Court could not

consider the material because the Affidavit was not submitted at the hearing before the DLT, was not part of the certified administrative record, and constitutes inadmissible hearsay.[15]

Delta's Affidavit is immaterial to the present controversy. The instant case does not involve Delta employees' right to refuse work on Sundays and holidays, but whether Delta employees are entitled to receive time-and-one-half rate of pay for Sunday and holiday work. The Affidavit at issue concerns the negative consequences that Delta would experience as a result of its employees being able to refuse work on Sundays and holidays. It does not provide this Court with any facts relevant to the effect a wage increase for Delta employees on Sundays and holidays would have on Delta's "price[s], route[s], or service[s]." See 49 U.S.C.A. § 41713.

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[15] Section 42-35-15, in pertinent part, provides that review is limited to the record before the agency. However, § 42-35-15 provides two instances when the review may include evidence not in the record. Section (e) of said provision notes that:

> (e) If, before the date set for the hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Section (f) of § 42-35-15 permits:

> [i]n cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

Also, under the Federal Administrative Procedures Act (APA), other courts have allowed supplementation of the record where there is a failure to explain administrative action. See Sierra Club v. Marsh, 976 F.2d 763, 772 (1st Cir. 1992) (citation omitted). Thus, though § 42-35-15 states that this Court's review of an administrative decision is "confined to the record" — see Nickerson v. Reitsma, 853 A.2d 1202, 1206 (R.I. 2004) (trial justice exceeded his authority under the APA by considering evidence outside the certified agency record including testimony about events that took place after the administrative hearing)—this rule is not an absolute bar on this Court's ability to take notice of certain relevant materials. But see 73A C.J.S. Public Administrative Law And Procedure § 407 (2012) ("Usually, a court trying the issues de novo may receive and consider evidence other than that offered before the administrative body.").

Here, whether the wage of an employee is related to an air carrier's prices, routes, and services is at issue. The establishment of such a connection includes questions of fact. See Le Blanc v. Balon, 104 R.I. 517, 247 A.2d 92, 93 (1968) (finding in the context of a workmen's compensation case that the determination of who is a motor vehicle "helper" within the meaning of the Fair Labor Standards Act is a question of fact). For example, in making her decision, the Hearing Officer stated, "[t]hese cases convince me that the wages of airline employees come within the sweep of the 'related to a price, route or service of an air carrier' language of the ADA." (Hearing Officer's Decision at 3.) The Hearing Officer's decision makes clear that she considered only relevant case law when she made her decision. See Sakonnet Rogers, Inc., 536 A.2d at 893 (an administrative decision which fails to include findings of fact required by statute cannot be upheld, § 42-35-15(g)(6)). Whether the wages of air carrier employees come "within the sweep" of the ADA must be measured, and that measurement must be based on facts within the record.

Our Supreme Court has stated that "[t]he underlying philosophy of the administrative process for settling disputes is to give finality to findings of fact made by administrative agencies, when such findings are supported by competent evidence and are procedurally proper." Lemoine, 113 R.I. at 291, 320 A.2d at 614. After reviewing the record, the Court finds that the Hearing Officer failed to sufficiently develop the administrative record on the relationship between wages and "rates, routes, and services." See Cullen v. Town Council of Town of Lincoln, 850 A.2d 900 (R.I. 2004) (if an agency fails to disclose the basic findings upon which its ultimate findings are premised, the court will neither search the record for supporting evidence nor will it decide for itself what is proper in the circumstances).

Therefore, this Court finds the Hearing Officer did not clearly develop the record on whether the wage of an employee is related to an air carrier's prices, routes, and services. The purpose of requiring sufficient findings of fact is to prevent reviewing courts from having to speculate as to the basis for the agency's conclusions. See Autobody Ass'n, 996 A.2d at 95; see also Milardo, 434 A.2d at 272. The deficiency in the administrative record warrants remand to the agency for development of the record pertaining to whether the effect of wages on "rates, routes, and services" is proximate or remote. See Hooper, 104 R.I. at 44-45, 241 A.2d at 815-16 (proper procedure is for court to order a hearing de novo or remand in order to afford the administrative agency an opportunity to clarify or complete its decision). The question of law at issue in the instant matter cannot be reached without the Hearing Officer receiving testimony, affidavits, or some other admissible evidence that concerns the relatedness between an increase in wages and disruption of Delta's ability to control its "rates, routes, or services."

IX

Conclusion

After review of the entire record, this Court grants Delta's motion to withdraw its Affidavit and remands this matter to the Department of Labor and Training for a hearing on the issue of the effect of employee wages on Delta's rates, routes, and services. This Court will retain jurisdiction. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Ramirez; LaPorte; Carter; Clayman; Brindle; Brown v. Rhode Island Department of Labor and Training, et al.
CASE NO:	PC 12-3071, PC 12-3072, PC 12-3073, PC 12-3074, PC 12-3075, PC 3076 (*Consolidated Appeals)
COURT:	Providence County Superior Court
DATE DECISION FILED:	September 3, 2014
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
For Plaintiff:	Vicki J. Bejma, Esq.
For Defendant:	Tedford B. Radway, Esq.; William E. O'Gara, Esq.