STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: January 28, 2016)

RICHARD P. SULLIVAN	:	
	:	
	:	
v.	:	**C.A. No. KC-2012-1126**
	:	
COVENTRY MUNICIPAL EMPLOYEES' RETIREMENT PLAN, TED PRZYBYLA, as FINANCE DIRECTOR/TREASURER OF THE TOWN OF COVENTRY and GARY P. COTE, KERRY L. MCGEE, THADDEUS JENDZEJEC, KAREN M. CARLSON and GREGORY LABOISSONNIERE, in their capacities as MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF COVENTRY AND AS ADMINISTRATORS OF THE TOWN PLAN	:	

DECISION

GALLO, J. This case involves a dispute between Richard P. Sullivan (Plaintiff) and the Town of Coventry (the Town), through its Finance Director, the Coventry Town Council, and the Coventry Municipal Employees' Retirement Plan (collectively, Defendants) as to the denial of Plaintiff's request for a pension. Plaintiff filed the instant suit alleging a breach of contract and requesting a declaratory judgment setting forth his rights under the Town's pension plan. The matter before the Court is the Defendants' motion for summary judgment, in which they argue (1) that the Court lacks subject matter jurisdiction to decide the matter and, in the alternative, (2) that the review of the decision of the Town Council sitting as Plan Administrator is subject to arbitrary and capricious review only and should be affirmed.

I

Facts and Travel

Plaintiff was employed by the Town in a variety of positions from February 1986 to December 2008. He served as a probate judge, an assistant solicitor, the Town Moderator, and Town Manager in that time. Based on his service in these various positions, he requested a pension from the Town.

After some apparent delay in the consideration of his request for a pension,[1] Plaintiff filed the instant suit against the Town and other Defendants. A series of preliminary motions before the Court resulted in the Town Council, sitting as the Plan Administrator of the pension plan, being ordered to hold a hearing on Plaintiff's pension claim. At that hearing, conducted on January 15, 2015, Plaintiff was represented by counsel and presented testimony and evidence. Plaintiff then submitted a post-hearing memorandum, after which the Town Council convened on January 31, 2015 and voted to deny Plaintiff's request for a pension. The Town Council then issued a written decision explaining its reasoning.

Following this decision, Plaintiff petitioned the Supreme Court for review via writ of certiorari. In an order dated June 12, 2015, the Supreme Court denied Plaintiff's petition, "without prejudice, however, to the petitioner's right to prosecute his Superior Court action[.]" Sullivan v. Coventry Mun. Emps.' Ret. Plan, et al., No. 15-58-M.P. (June 12, 2015). The case is now before the Superior Court for resolution of the issues presented.

[1] This delay, or at least some part thereof, appears to be attributable to a dispute over whether the meeting should be in open session or a closed executive session.

II

Jurisdiction

The instant case raises a vexing question as to the subject matter jurisdiction of the Superior Court in declaratory judgment actions seeking review of the decisions of town councils sitting as quasi-judicial entities. On the one hand, Defendants insist that the Court is without jurisdiction to decide the controversy before it, as the Supreme Court has held that review of quasi-judicial actions by a town council is available only through certiorari to the Supreme Court. Plaintiff asserts, on the contrary, that jurisdiction is provided through both the Superior Court's general jurisdiction under G.L. 1956 § 8-2-14 and its jurisdiction to issue declaratory judgments under G.L. 1956 §§ 9-30-1 and 9-30-2. Before the Court reaches this dispute, however, it must address the effect of the Supreme Court's denial of Plaintiff's petition for review by writ of certiorari.

A

The Petition for Certiorari

Plaintiff contends that the denial of his petition for certiorari operates as a decision on the question of jurisdiction, insofar as he retains the right, as noted by the Supreme Court, to "prosecute his Superior Court action against the [Defendants] . . . to a conclusion." Sullivan, No. 15-58-M.P. Under the Supreme Court Rules of Appellate Procedure, however, "[a] denial of a petition, without more, is not an adjudication on the merits and has no precedential effect, and such action is to be taken as being without prejudice to a further application to this Court or any court for the relief sought." Sup. Ct. R. App. P. 13(e) (Rule 13(e)).

The order entered by the Supreme Court is only a denial of the petition, and the comment contained therein to the effect that Plaintiff retains the right to prosecute this action to a

conclusion is merely a reiteration of the terms of Rule 13(e). The denial of his petition for review cannot operate to decide the issue of jurisdiction; the denial "has no precedential effect" and simply is not any kind of "adjudication on the merits" of the claims in his action. Id. The Plaintiff will not be prevented from seeking review after the conclusion of this action because the denial is without prejudice to further application to the Supreme Court. See Rule 13(e). The Supreme Court's order denying Plaintiff's petition for certiorari therefore does not decide the issue of this Court's subject matter jurisdiction.

B

Subject Matter Jurisdiction

Subject matter jurisdiction is "an indispensable requisite in any judicial proceeding." Zarrella v. Minn. Mut. Life Ins. Co., 824 A.2d 1249, 1256 (R.I. 2003). It is "the very essence of the court's power to hear and decide a case" and is defined as "jurisdiction over the nature of the case and the type of relief sought[.]" Long v. Dell, Inc., 984 A.2d 1074, 1079 (R.I. 2005) (quoting Black's Law Dictionary 931 (9th ed. 2009)). It is well established that "a claim of lack of subject matter jurisdiction may be raised at any time." Id. at 1078 (quoting Pollard v. Acer Grp., 870 A.2d 429, 433 (R.I. 2005)).

It is clear, at least, that there is no appellate jurisdiction in this Court pursuant to the Administrative Procedures Act (APA). See G.L. 1956 § 42-35-1 (excluding municipalities and municipal boards from reach of APA); see also § 42-35-15 (stating that appeals flow from "contested case[s]" before an agency). The parties do not argue that there is any right to a direct appeal to the Superior Court from a decision of a town council acting as the plan administrator of a pension system. The question, then, is whether an appeal from a town council's quasi-judicial

actions must be taken to the Supreme Court by writ of certiorari or may be entertained under the declaratory judgment jurisdiction of the Superior Court. See §§ 9-30-1, 9-30-2.

In Scolardi v. City of Providence, a plaintiff challenged the implementation of a decision of the City of Providence's Retirement Board via a declaratory judgment action in the Superior Court. 751 A.2d 754, 755 (R.I. 2000). That case involved the city failing to pay pension benefits after its retirement board approved a pension. The Supreme Court noted that the declaratory judgment jurisdiction of the Superior Court did not extend to review of the retirement board's decision; the only avenue for relief available in the Superior Court was via a writ of mandamus to compel execution of the retirement board's decision. Id. at 755-56. The Supreme Court specifically held that:

> "The trial justice was without authority to conduct the de novo review. In the absence of specific statutory delineation of a particular forum for relief, a party must resort to this Court by way of common law certiorari. Therefore, the trial justice was without jurisdiction to review the decision of the board." Id. at 756.

It would appear then, that because decisions of a town council have no statutorily prescribed right to review in the Superior Court, jurisdiction does not lie in this Court.

The Supreme Court has decided differently in a related context, however. In Canario v. Culhane, 752 A.2d 476 (R.I. 2000), the Supreme Court held that § 9-30-2 afforded "a broad grant of jurisdiction to the Superior Court to determine the rights of any person that may arise under a statute not in its appellate capacity but as part of its original jurisdiction." Id. at 479. Section 9-30-2 provides, in relevant part:

> "[a]ny person interested under a . . . written contract, or other writings constituting a contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereunder." Sec. 9-30-2.

Under the logic of Canario, § 9-30-2 is so expansive as to confer original jurisdiction upon the Superior Court to review an agency determination on pension eligibility. However, the Court does not find the logic of Canario applicable to the instant case. In Canario, which involved a state trooper's request for a disability pension, the Superior Court had a vital role to play in developing a record and finding facts, a role that it need not play here. See 752 A.2d at 479-80. The state police superintendent did not conduct a full hearing, nor did proceedings appear to take place on the record. Instead, "[t]he superintendent investigated the events" surrounding the injury leading to the plaintiff's request for a disability pension and then made a determination. See id. at 478. None of the hallmarks of an adjudicative proceeding appear in the record of that case, nor does the state police superintendent appear to have acted in a formal quasi-judicial fashion.

Contrast this to the instant case and Scolardi, in which municipal councils conducted quasi-judicial hearings which afforded the parties seeking pensions the opportunity to be represented by counsel, to present evidence and testimony, and resulted in the development of a full record and formal written decision explaining the reasoning behind the outcome. See 751 A.2d at 754-55. A declaratory judgment action in the instant case affords no meaningful opportunity for the Superior Court to find facts, as that role has been fulfilled by the Town Council sitting as Plan Administrator. See Goncalves v. NMU Pension Trust, 818 A.2d 678, 682 (R.I. 2003) ("'If a plan grants discretionary authority for a plan administrator to interpret the terms of the plan and to apply them to specific cases, then the administrator's powers include the ability to make appropriate factual findings.'" (quoting Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 185 (1st Cir. 1998))); Hillside Assocs. v. Stravato, 642 A.2d 664, 667 (R.I. 1994) (describing the evidentiary processes of a quasi-judicial entity).

The Town's pension plan grants discretion to the Town Council, in its capacity as the Plan Administrator, to both interpret the terms of the plan and apply them to specific cases, as "the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions," and "may exercise [its] authority in [its] full discretion . . . [t]his discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration." Defs.' Ex. D, "Coventry Municipal Employees' Retirement Plan" (the Plan), 2008 Restatement, Art. IX, § 9.01, at 47; Art. IX, § 9.05, at 48. Absent a role as fact-finder, the Superior Court in a declaratory judgment review of a pension determination would be limited to a mere review of the record below, in which the discretionary authority of the decision-maker is given "great deference" and review is strictly limited to an examination for arbitrary and capricious conduct. Canario, 752 A.2d at 479; see also Ferreira v. Culhane, 736 A.2d 96, 97 (R.I. 1999) (mem.) (establishing standard of review).

The Court is constrained to view its subject matter jurisdiction in terms of its "jurisdiction over the nature of the case and the type of relief sought." Long, 984 A.2d at 1079. The nature of this case is one in which Plaintiff seeks review of the quasi-judicial determination of the Town Council sitting as Plan Administrator of its pension plan; the type of review sought is exactly that provided by certiorari to the Supreme Court. As the Supreme Court has explicitly held, it alone is the proper forum for review from the quasi-judicial decision of a municipal board, via a petition for a writ of certiorari. Scolardi, 751 A.2d at 756. The Superior Court therefore lacks subject matter jurisdiction in this case, and the case must be dismissed.

III

Standard of Review

Assuming, arguendo, that the Superior Court does possess subject matter jurisdiction over the instant case, the parties present an argument as to the appropriate standard of review. Plaintiff insists that the original jurisdiction conferred by § 9-30-2 allows for a de novo trial on the merits of his pension application. He is mistaken.

Even when the declaratory judgment act allows the Superior Court to determine rights "not in its appellate capacity but as part of its original jurisdiction[,]" the standard of review in pension eligibility cases, as adverted to above, requires "great deference" to be given to the initial decision-maker. Canario, 752 A.2d at 479. Review is limited to the arbitrary and capricious standard. See id. (citing Ferreira, 736 A.2d at 97). "Use of the arbitrary and capricious standard means that reviewing courts will uphold administrative decisions interpreting [a pension] plan as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical, and supported by substantial evidence." Goncalves, 818 A.2d at 682-83 (quoting Doyle, 144 F.3d at 184).

IV

Analysis

Undeterred, Plaintiff claims the Town Council's decision to deny his request for a pension fails to pass muster even under the more stringent arbitrary and capricious standard. Plaintiff presents two primary arguments: first, he argues that bias and prejudgment infected the decision-making process of the Town Council and thus rendered its decision arbitrary and capricious; second, he argues that the decision itself is arbitrary and capricious for a variety of

reasons. Defendants, in turn, argue that the case should not be reviewed, as doing so amounts to a relitigation of the case in violation of the principles of res judicata; they argue in the alternative that the Town Council's decision as Plan Administrator is neither arbitrary nor capricious.

A

Claim Preclusion

Defendants contend that even if this Court had jurisdiction, the instant case should be disposed of on the grounds that Plaintiff's claim for review is barred by the doctrine of claim preclusion. Generally, claim preclusion prevents the relitigation of issues already adjudicated in a prior proceeding, where (1) there is the same identity of the parties, (2) the same identity of the issues presented, and (3) a final judgment in the previous action. Reynolds v. First NLC Fin. Servs., LLC, 81 A.3d 1111, 1115 (R.I. 2014) (internal citations and quotation marks omitted).

While it is true that the Rhode Island Supreme Court has extended the doctrine of claim preclusion to quasi-judicial administrative agency decisions, see Town of Richmond v. Wawaloam Reservation, Inc., 850 A.2d 924, 933 (R.I. 2004), the proposed application of the doctrine is inapposite to the instant case. Defendants cannot direct the Court to any prior final judgment on the merits of this claim. Assuming that the Court has jurisdiction, the nature of this action is not a de novo trial on the merits of Plaintiff's application for a pension. It is, instead, a review of the administrative proceedings under the original jurisdiction of the Superior Court as conferred by § 9-30-2. Such an action, albeit taking place under the original jurisdiction of the Court, is—as the Supreme Court has made plain— limited to the arbitrary and capricious standard. See Canario, 752 A.2d at 479; Ferreira, 736 A.2d at 97. Thus, even assuming jurisdiction is present, this action is not in the nature of a new trial on the merits, and instead

proceeds under a limited standard of review. There cannot be any relitigation of Plaintiff's claim under such a standard, and the invocation of res judicata is inappropriate.

B

Bias and Prejudice on the Part of the Council

Directing the Court to various facts, circumstances, and statements, Plaintiff argues that the Town Council was biased against him and prejudged his application for a pension. There are two components to this argument: (1) that the presence of the Town Council's attorney and various actions by Town Council members rendered the proceedings infected by bias; and (2) that the Town Council prejudged Plaintiff's application for a pension.

Plaintiff cites statements by Town Council members to support his arguments.[2] He also directs the Court's attention to Attorney Vincent Ragosta's (Ragosta) presence at the meetings, as well as the examination of his witnesses by Ragosta and the Town Council. See Transcript of Coventry Town Council Meeting at 12, 15, 18 (Jan. 15, 2015). Plaintiff also adverts the Court to the deposition testimony of Cheryl Wilcox, the secretary to the Town Manager, in which she stated that the Town Manager had expressed the opinion that Plaintiff was not eligible for a pension. See Dep. of Cheryl Wilcox at 41-42, Dec. 19, 2014. Defendants do not dispute these facts.

It is clear that when a body "carries out a quasi-judicial function, it has an obligation of impartiality on par with that of judges." Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 443 (R.I. 2010) (citing Wawaloam Reservation, Inc., 850 A.2d at 933). However, "adjudicators in administrative agencies enjoy a 'presumption of honesty and integrity.'" Id. (quoting Davis v.

[2] Following the hearing, at the invitation of the Town Solicitor, Town Council members individually offered comment relative to their rationale for concluding that Plaintiff was not eligible for a pension. See Hr'g Tr. at 5-13 (Coventry Town Council, Jan. 31, 2015).

Wood, 444 A.2d 190, 192 (R.I. 1982)). This presumption can be overcome by showing that "'the same person(s) involved in building one party's adversarial case is also adjudicating the determinative issues. . .'" Kent Cnty. Water Auth. v. State (Dep't of Health), 723 A.2d 1132, 1137 (R.I. 1999) (quoting La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights, 419 A.2d 274, 285 (R.I. 1980)). It is therefore Plaintiff's burden to create a genuine dispute as to material facts regarding the resolution of this question in order to avoid summary judgment. Bias will not be found where it is supported "'by a mere accusation that is totally unsupported by substantial fact.'" In re McKenna, 110 A.3d 1126, 1146 (R.I. 2015) (quoting State v. Mlyniec, 15 A.3d 983, 1000 (R.I. 2011)).

These requirements of impartiality do not operate to automatically render the Town hostile to Plaintiff's request for a pension if it investigates his witnesses and examines evidence, though, as Plaintiff appears to contend. The Town Council, in its capacity as the Plan Administrator and acting through Ragosta, joined with Plaintiff in submitting a great deal of documentary evidence into the record of its proceeding. See generally Transcript of Coventry Town Council Meeting, Jan. 15, 2015. The members of the Town Council, both individually and through their attorney, examined the witnesses present. It is clear from the transcript that an evidentiary hearing occurred at which a record was developed by both Plaintiff and Defendants to enable an appropriate decision by the Town Council. Nor is there any indication from either party that it was inappropriate for the Town Council, acting as Plan Administrator in connection with a pension eligibility determination, to conduct an investigation, including consulting its records, examining witnesses and evidence, and referring to the plan itself. An agency may conduct an investigatory hearing that is nonetheless not adversarial.

Nor is it sufficient for Plaintiff to allege that members of the Town Council should be disqualified on the basis that they had at least some form of initial impression about his case. The "form[ation] [of] certain tentative intellectual conclusions as to how the issues presented might best be resolved . . . is entirely appropriate in the decision-making process." Champlin's Realty Assocs., 989 A.2d at 454 (Robinson, J., concurring in part and dissenting in part). The formation of some initial conclusion or opinion on a matter "is what any responsible decision-maker does," especially where, as here, there is every indication that the decision-maker did so "without excluding the possibility that subsequent evidence or argument might sway him or her in another direction." Id. The difficult process of decision-making is not one subject to facile delineation, and proper consideration of a position does not entail a wholesale rejection:

> "I see decision-making as neither a process that results in an early conviction based on instant exposure to competing briefs nor one in which the judge keeps an open mind through briefs, discussion in chambers, argument, and conference, and then summons up the will to decide. I see the process, rather, as a series of shifting biases.
> . . . .
> "One reads a good brief from the appellant; the position seems reasonable. But a good brief from appellee, bolstered perhaps by a trial judge's opinion, seems incontrovertible. Discussion with the law clerks in chambers casts doubt on any tentative position. Any such doubt may be demolished by oral argument, only to give rise to a new bias, which in turn may be shaken by the postargument conference among the judges . . . . The guarantee of a judge's impartiality lies not in suspending judgment throughout the process but in recognizing that each successive judgment is tentative, fragile, and likely to be modified or set aside as a consequence of deepened insight." Id. (quoting Frank M. Coffin, The Ways of a Judge: Reflections from the Federal Appellate Bench 63 (1980)).

With respect to the evidence that the Town Manager had expressed his opinion, it should be noted that the Town Manager serves no role in the decision-making process. Nor is there any evidence that indicates that any member of the Town Council—the actual decision-makers—had,

prior to the hearing, formulated a hard-and-fast opinion relative to Plaintiff's pension request. Although Plaintiff may genuinely feel that the Town Council is biased against him in these proceedings, it is he that bears the burden of establishing a lack of impartiality. See Champlin's Realty Assocs., 989 A.2d at 443. An allegation of bias, unsupported by competent evidence, will not suffice to support a finding of bias. See State v. Sampson, 884 A.2d 399, 405 (R.I. 2005); State v. Lessard, 754 A.2d 756, 759 (R.I. 2000); State v. Clark, 423 A.2d 1151, 1158 (R.I. 1980). There is no dispute as to the facts Plaintiff cites in support of his claims of bias. Based on those undisputed facts, it is clear that no rational fact-finder could conclude that any member of the Town Council was affected by bias. Judgment as a matter of law, and therefore summary judgment, is appropriate.

C

The Town Council's Decision

Plaintiff argues that the Town Council's decision denying his request for a pension is arbitrary and capricious. This claim, finally reached, is the truly dispositive issue in the current controversy. For the following reasons, and still assuming, arguendo, the Court possesses jurisdiction, the Court holds that the Town Council's decision was neither arbitrary nor capricious.

So long as the decision of the Town Council is rational, logical, and supported by substantial evidence, the Court will not disturb its decision as administrator of the pension plan. See Goncalves, 818 A.2d at 682-83. In the event that a pension plan grants its administrator discretionary authority to interpret the terms of the plan and apply them to specific cases, "the administrator's powers include the ability to make appropriate factual findings." Goncalves, 818 A.2d at 682 (quoting Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 185 (1st Cir. 1998)). As

noted elsewhere in this decision supra, the facts in this case are essentially undisputed, leaving only the question of whether the moving party is entitled to judgment as a matter of law.

"'Use of the arbitrary and capricious standard means that reviewing courts will uphold administrative decisions interpreting the plan as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical, and supported by substantial evidence.'" Id. at 682-83 (quoting Doyle, 144 F.3d at 184). A reviewing court should not "substitute its own judgment for that of the administrator, nor disturb an administrator's interpretation of a plan so long as it [is] reasonable." Id. at 683 (citing Terry v. Bayer Corp., 145 F.3d 28, 40 (1st Cir. 1998)). Our Supreme Court has approvingly cited one commentator's description of the arbitrary and capricious standard:

> "The touchstone of arbitrary and capricious conduct is unreasonableness. When reviewing a determination under the arbitrary and capricious standard, the court's inquiry is not into whose interpretation of plan documents is most persuasive, but into whether the plan administrator's interpretation is unreasonable. Winters v. Costco Wholesale Corp., 49 F.3d 550 (9th Cir. 1995). Further, when reviewing a decision made under the arbitrary and capricious standard, the court's role is limited to determining whether determinations were made rationally and in good faith—not whether they were right. Guy v. Southeastern Iron Workers' Welfare Fund, 877 F.2d 37 (11th Cir. 1989). 'A legally incorrect interpretation does not automatically signal an abuse of discretion.' Duhon v. Texaco, Inc., 15 F.3d 1302, 1311 (5th Cir. 1994) (Johnson, J., dissenting). 'The administrator's decision need not be the only logical one nor even the best one. It need only be sufficiently supported by facts within their knowledge to counter a claim that it was arbitrary and capricious.' Woolsey v. Marion Lab., Inc., 934 F.2d 1452, 1460 (10th Cir. 1991); see also * * * Donato v. Metropolitan Life Ins. Co., 19 F.3d 375, 380 (7th Cir. 1994) (a decision is not arbitrary and capricious simply because the 'decision simply came down to a permissible choice between the position of [the decision maker's] independent consultants, and the position of [the claimant's physicians]')." Id. at 683 n.3 (quoting John F. Buckley, ERISA Law Answer Book, Q21:31 at 21-32-33 (4th ed. 2003)).

The Town's pension plan clearly reserves the interpretation of provisions of the Plan to the discretion of the Town Council, in its capacity as the Plan Administrator: "the Plan Administrator has complete control of the administration of the Plan . . . the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions." Defs.' Ex. D, the Plan, Art. IX, § 9.01, at 47. Furthermore, the Plan Administrator is granted discretion by the plan in regards to the management, administration, and investment of the Plan: the Plan Administrator "may exercise [its] authority in [its] full discretion . . . [t]his discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration." Id. at Art. IX, § 9.05, at 48. The parties appear to agree on this critical factual issue, as there is no dispute presented that the Town Council does not serve as Plan Administrator, nor is it disputed that the Plan Administrator may interpret and administer the Plan with complete discretion.

The Town Council's written decision addresses Plaintiff's primary argument: that through his long service in the variety of positions in which he served the Town, he acquired pension eligibility under the Plan. The decision characterizes the issue as one of first impression, as "no probate judge, assistant probate judge, assistant solicitor, or town manager has previously requested a pension under the Plan or even been considered as a Plan participant." Defs.' Ex. B, In the Matter of Richard P. Sullivan's Application for Pension Benefits Under the Coventry Municipal Employees' Retirement Plan (hereinafter Decision), at 4. The critical determination is whether—and if so, when—Plaintiff became an "Eligible Employee" for the purposes of the Plan. Id. at 6.

The original version of the Plan, since restated multiple times, defined "Eligible Employee" vaguely. Id. at 6-7. Specifically, the positions in which Plaintiff served the Town—probate judge, assistant probate judge, and assistant solicitor—were not specifically listed as Eligible Employees; nor do they appear to have been added to the Plan's definitions in its several restatements. Id. at 7-8. Plaintiff himself testified that he was never aware of the existence of any pension plan covering his work positions and never made any contributions to the pension plan because of that belief. Id. at 8. ("I didn't [contribute to the pension], because I had no idea there was a pension involved.") The Town Council also took note of the fact that certain employees were required to increase contributions to the Plan over the time period in which Plaintiff worked; these increased contribution requirements—indeed, any contribution requirements—were never applied to individuals serving in Plaintiff's positions. Id. at 8-9.

The Town Council then moved on to analyze the essence of the positions Plaintiff held, noting that he was at no point a full-time employee. It based this finding on the testimony of Plaintiff and his admissions that he was never a full-time worker during the course of his employment with the Town. Id. at 9-10. Based on these facts, the Town Council decided that the positions in which Plaintiff served the great balance of his time—all but roughly a year-and-a-half of his approximately twenty-two years of service—were not Eligible Employee positions that participated in the Plan. Id. at 11. Even assuming that the last remaining period, in which Plaintiff served as Town Manager, is a pension-eligible position, Plaintiff simply did not serve sufficient time in the position to accrue pension rights. Id. at 11 n.7.

The Town Council also addressed in depth Plaintiff's primary contention in a post-hearing memorandum submitted to the Town Council—that a legal opinion solicited by the interim Town Manager in 2008, which opined that Plaintiff appeared to be an employee eligible

for pension participation, was binding upon the Town Council in their administration of the Plan. Id. at 12-13. The Town Council determined that, as the Plan committed its administration to the sole discretion of the Plan Administrator, the opinion did not bind them, but they considered its reasoning nonetheless. Id. at 13. The opinion explored the possibility that Plaintiff could be considered an "Administrative Employee" under the Plan, and therefore eligible for a pension. Id. The Town Council noted, however, that the legal opinion concluded that the definition of "Administrative Employee," in respect to the Plan and whether or not Plaintiff's positions counted as "Administrative Employee" positions, was ambiguous, and subject to necessary interpretation. Id. Acknowledging the ambiguity of the term, the Town Council decided that Plaintiff's positions simply did not fit under the "Administrative Employee" framework, as it resolved the ambiguity to cover "full-time commitments to the Town," in positions further typified by "set working hours," in addition to participation in Town health coverage, holiday pay and overtime allowances, and vacation, sick, and other leave time. Id. at 15.

Finally, the Town Council's decision addresses Plaintiff's contention that the Plan must be strictly construed against the Town, in a form of contra proferentem argument. See id. at 14. The Town Council noted that the Plan was actually drafted by a third party, Bankers Life Co., pursuant to a collective bargaining agreement between the Town and A.F.S.C.M.E. Council 94. Id. Furthermore, the Town Council determined that it could not, as a fiduciary of the Plan, simply determine that "Administrative Employee" should be defined so broadly as to include positions which had apparently never been considered to participate in the Plan, and which had therefore never been required to contribute to it. Id. at 14-15.

Concluding, the Decision notes that while there may be an argument for considering the phrase "Administrative Employee" to cover Plaintiff's positions, experience provides no support

for the Plan Administrator to adopt such a construction. Such positions, the Town Council decided, have never previously been considered by any party as being covered under the Plan and have never been required to contribute to the Plan. Additionally, the Town Council determined that the positions held by Plaintiff were distinguishable from those it would hold as covered under the "Administrative Employee" status. See id. at 15.

As stated above, the Court is constrained to view the decision of the Plan Administrator under the arbitrary and capricious standard of review. See Goncalves, 818 A.2d at 682 (citing Canario, 752 A.2d at 479). So long as the Plan Administrator has acted within its authority and issued a decision that is rational, logical, and supported by substantial evidence, its decision will be upheld. See id.

The Court perceives no error under this standard. There was clearly "more than a scintilla" of evidence presented to the Town Council sitting as the Plan Administrator, satisfying the substantial evidence requirement. Cf. Lischio v. Zoning Bd. of Review of N. Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003). Likewise, there is no indication in the decision or the record that shows it to be unreasonable. The Town Council issued a rational decision based on its clear authority to interpret and administer the terms of the Plan. Based on the evidence before it, the Town Council chose between what it acknowledged to be two permissible constructions of the Plan; doing so is not inherently arbitrary or capricious. See Donato v. Metro. Life Ins. Co., 19 F.3d 375, 380 (7th Cir. 1994).

Plaintiff nonetheless maintains that, despite this reasonable choice between alternatives, the decision is arbitrary and capricious. He first argues that the oral statements of Town Council members demonstrate arbitrary and capricious decision-making. Additionally, Plaintiff contends that Town Council members conducted impermissible ex parte investigations of evidence by

reviewing Town Council minutes to determine Plaintiff's attendance at meetings, considering the provisions of the Internal Revenue Code to aid in resolving the definition of "administrative employee," and referring to their personal recollections of events relevant to Plaintiff's application.

Review of the challenged statements reveals no error. While offering oral statements of council members as evidencing bias or prejudice is permissible, as discussed—albeit rejected in this case—supra, the oral statements of the Town Council during the hearing do not constitute their decision upon the merits of Plaintiff's claim for a pension. Judicial review of a quasi-judicial decision is confined to the written decision of such a proceeding. Moise v. Ret. Bd. of Emps.' Ret. Sys. of Providence, 635 A.2d 761 (R.I. 1994) (mem.); see also Berberian v. Dep't of Emp't Sec., Bd. of Review, 414 A.2d 480, 482 (R.I. 1980). There being a properly reviewable written Decision, oral statements during the hearing by Town Council members do not constitute their decision; the written document does. Even if this were not the case, the statements do not render the Decision arbitrary and capricious.

With respect to Plaintiff's arguments regarding ex parte fact-finding and research by the Town Council, it is certainly true that "if [a] decision maker 'intends to consult any documentary source or person concerning facts or opinions about the merits of an appeal,' he or she must notify the parties so that they may 'contest any such evidence' and 'cross-examine any people consulted.'" Champlin's Realty Assocs., 989 A.2d at 441 (quoting Arnold v. Lebel, 941 A.2d 813, 821 (R.I. 2007)). This general requirement facilitates appropriate judicial review and requires all "litigious facts" to be properly presented on the record. Id. at 440. Assuming that the challenged statements are properly reviewable in and of themselves, none offend the dictates of impartiality or the rules of evidence and procedure.

As to the Town's minutes, it is well established that "a court may take judicial notice of its own records including issues and decisions in a prior proceeding involving the same parties." In re Michael A., 552 A.2d 368, 369 (R.I. 1989); see 31A C.J.S. Evidence § 60 (noting that judicial notice by a board or commission of its own records is appropriate). The minutes of a municipal meeting are an official record of that municipality. Fargnoli v. Cianci, 121 R.I. 153, 168, 397 A.2d 68, 76 & n.9 (1979). While it is clear that "[n]ot every document that may have been placed in a . . . file at some time during the course of proceedings may properly be regarded as part of the record[,]" In re Michael A., 552 A.2d at 370, the facts noticed in the official minutes of the meeting of a town council are not subject to reasonable dispute and are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. See R.I. R. Evid. 201(b). There is no reasonable possibility that reference to official Town records in determining Plaintiff's presence at meetings—as part of determining his work history and its relevance to his pension application—was somehow fundamentally unfair to the extent that he was denied due process by the taking of judicial notice as to those facts. See In re Michael A., 552 A.2d at 370. Even if the written Decision of the Town Council, the only properly reviewable Decision before the Court, makes implicit reference to this evidence, then such a consideration is wholly proper.

Reference to the Internal Revenue Code is likewise proper in a quasi-judicial proceeding. Section 3 of Title 9, Chapter 19 of the Rhode Island General Laws requires "[e]very court of this state [to] take judicial notice of the common law and statutes of every other state, territory, and other jurisdiction of the United States." This commandment is not merely discretionary; every court, and, by extension, quasi-judicial entity, "shall take judicial notice" of the laws of the United States and its states. Sec. 9-19-3. Reference to the Internal Revenue Code was therefore

entirely within the power of the Town Council sitting in a quasi-judicial capacity as the Plan Administrator. As with the discussion above regarding the Town minutes, the written Decision makes no reference to the Internal Revenue Code; assuming that the statements can be considered part of the Decision, they are nonetheless entirely appropriate and did not prejudice Plaintiff.

Lastly, it is well settled that the personal recollections and observations of municipal board members are competent evidence in a proceeding before them, so long as their nature and character are disclosed upon the record. Restivo v. Lynch, 707 A.2d 663, 666 (R.I. 1998). The personal recollection of Town Council member Laboissonniere, disclosed upon the record as being an observation he made while on the Town Council and having personal knowledge of the event in question—Plaintiff's absence during a period in 2006—is proper. Because the disclosure on the record is adequate to inform the Court of the basis of the observation and the nature of the Town Council member's knowledge, the consideration of this evidence would not be error. The Court notes that again, though, the written Decision of the Town Council does not consider this evidence, nor rely upon it in reaching its conclusion.

In sum, assuming the Court enjoys subject matter jurisdiction over this controversy, the Court finds the Town Council's Decision denying Plaintiff's application for a pension is not arbitrary and capricious, nor is it affected by error of law or procedural impropriety. Summary judgment would, in the alternative, be appropriate.

V

Conclusion

For the foregoing reasons, the Court dismisses the current action for lack of subject matter jurisdiction. In the alternative, even if subject matter jurisdiction exists, the Plaintiff has

failed to establish any genuine issues of material fact relating to the validity of the Decision of the Town Council, and therefore the Defendants are entitled to judgment as a matter of law.

Counsel shall submit to the Court an appropriate order and judgment reflecting this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Sullivan v. Coventry Municipal Employees' Retirement Plan, et al.**
CASE NO:	**KC-2012-1126**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**January 28, 2016**
JUSTICE/MAGISTRATE:	**Gallo, J.**
ATTORNEYS:	
For Plaintiff:	**Robert D. Goldberg, Esq.**
For Defendant:	**Vincent F. Ragosta, Jr., Esq.** **Marc DeSisto, Esq.**