



Office of Personnel Administration (OPA), by which he sought a reclassification to the CLTCR position. The OPA denied Petitioner's claim that he was performing the duties of the CLTCR position, but it found he was performing the duties of a Chief Rate Setting Analyst (CRSA) (Pay Grade 35). Pet'r's Compl. ¶ 7; *see also* Def.'s Br. at 1.

Abraham filed an appeal with the Administrator of Adjudication (AA) pursuant to G.L. 1956 § 36-4-40, which conducted a hearing and subsequently upheld the finding of the OPA. Def.'s Br. at 1; *see also* Pet'r's Mem. at 5. Petitioner appealed this decision to the PAB pursuant to § 36-4-40.2. Hearing on his appeal was held on April 10, 24, May 15, June 5 and 12, 2012. A summary of the testimony follows.

Petitioner was hired by DHS in 2002 in the Rate Setting Unit (Unit) and, beginning in early 2008, when he was working in the Hospital Settlement Unit, he was trained by Greg Gongoleski, the CLTCR, "to absorb the responsibilities and duties of chief long-term care reimbursement." Hr'g Tr. 15, Apr. 10, 2012. Gongoleski trained him from approximately January through May of 2008, during which time Petitioner also performed "various other tasks." *Id.* at 18. According to Abraham, he was, during this time, "doing everything that was performed by Mr. Gongoleski at Grade 39," in addition to other tasks he performed. *Id.* at 19. When Gongoleski retired in June 2008, Petitioner believed he was "performing all [his] duties." *Id.* at 20. On his reclassification questionnaire, Petitioner listed the functions he was performing that he believed to be above his Pay Grade and stated that Gongoleski trained him in some (not all) of these tasks. *Id.* at 27-39. Petitioner explained how he was performing the job functions of the CLTCR and submitted the classification for that position as Exhibit 4C. *Id.* at 41-42. <sup>1</sup>

---

<sup>1</sup> Petitioner believed the Medicaid Program in DHS is a "highly specialized program area of [a] statewide medical care program" as contemplated in the CLTCR job description. *Id.* at 45. He

Petitioner testified he is in charge of Long-Term Care Reimbursement, a portion of the State's Medicaid program, and other administrators direct other aspects of Medicaid separate from Long-Term Care Reimbursement. Hr'g Tr. 5-8, Apr. 24, 2012. At the time of the desk audit, he was supervising seven employees for whom he signed time records and approved requests for time off, and was performing duties outside the Long-Term Care Reimbursement section. *Id.* at 12-15. Petitioner assisted Administrator Ralph Racca (Racca) in developing rules and regulations for the Unit and worked with Racca on updates regarding "principles of reimbursement for nursing facilities." *Id.* at 26-28. Additionally, he was involved in planning the budget of the Unit and met with administrators regarding the entirety of the long-term care program. *Id.* at 62-66.

Abraham maintains that he has the skills and knowledge specified in the CLTCR classification. *Id.* at 71. He acknowledged "everything that I've done encompasses the functions of [a] chief rate setting analyst"; however, he asserted he has been performing duties and tasks "well beyond those of the chief rate setting analyst [and] doing everything on a statewide base." *Id.* at 77. Petitioner confirmed Gongoleski trained him from January to May 2008, during which time he was performing the CHSBO's duties in addition to training. *Id.* at 79-90. However, Racca was the administrator supervising Gongoleski, and Petitioner acknowledged he did not meet with Racca regarding Gongoleski's specific duties, and Gongoleski did not have authority to appoint him to the CLTCR position. *Id.* at 95-96. The record also reflects Petitioner was not granted a Three Day Rule (TDR) appointment to the CLTCR position or the CRSA position upon Gongoleski's retirement.<sup>2</sup> *Id.* at 98.

---

acknowledged "[t]he only person who has ultimate responsibility for the Medicaid program is the . . . State Medicaid Director." *Id.* at 47-48.

<sup>2</sup> The Three Day Rule provides that if a State employee performs the duties of a position with a higher Pay Grade for three days (or more), the employee must be compensated at the higher Pay Grade for such time as the employee is performing such duties.

In paperwork completed in connection with the desk audit, Racca asserted he (not Petitioner) had taken over the CLTCR's supervisory duties. *Id.* at 117-18. However, Petitioner believed Racca could not take over any CLTCR duties because it is a union position and Racca is not a member. *Id.* at 118. Abraham further testified Racca "was fully aware, to my understanding, that I was performing" the tasks of the CLTCR position, and Racca agreed Petitioner was performing duties beyond his CHSBO classification. *Id.* at 120-22. After the reclassification, it was recommended Petitioner receive an upgrade from a CHSBO to a CRSA, an upgrade he deemed unsatisfactory, believing he was performing all of the duties of the CLTCR. *Id.* at 129-30. After Gongoleski retired, Petitioner assumed his role on a temporary basis and began signing time records, but Racca told him to cease that practice. *Id.* at 140-44. Petitioner testified signing such time records was the only responsibility of Gongoleski that Racca told Petitioner not to fulfill. *Id.* at 149.

Vincent Berretto (Berretto) testified for Petitioner. He is employed as a CHSBO with the Unit. (Pay Grade 33). He explained Petitioner "assumed control" of the rate-setting Unit following Gongoleski's retirement. Hr'g Tr. 5-7, May 15, 2012. Maintaining and developing policies for the setting of reimbursement rates are among the duties of the CLTCR. *Id.* at 10. Berretto explained that the Petitioner signed his time records following Gongoleski's retirement until shortly following Petitioner's reclassification request when Racca "took exception" and "told him to stop." Going forward, Racca would sign the time records of Berretto and Petitioner, though at the time of the reclassification, Petitioner was supervising the Unit and performed disciplinary functions when necessary. *Id.* at 17-20. Upon his retirement and that of Anthony Rego, the Unit's Chief Rate Analyst, Gongoleski told Berretto he would recommend that Petitioner take over his position and Berretto take Rego's position. *Id.* at 25-26. Berretto believed

Gongoleski was training Petitioner so that following his retirement he could take over the Unit. Since Gongoleski's retirement, Petitioner has done Gongoleski's job, and thus, Berretto supports Petitioner's reclassification effort. *Id.* at 34.

Marie Joseph<sup>3</sup> (Joseph) testified that she works with the Office of Health and Human Services (OHHS) agencies and is very familiar with DHS. Hr'g Tr. 71, May 15, 2012. When Petitioner submitted more documentation than is the norm for a desk audit, she contacted her supervisor, Dr. Thomas Mannock (Mannock), for assistance. *Id.* at 87-88. She was concerned Petitioner was overly focused on the similarity of his job duties to those of Gongoleski. *Id.* at 89. Her determination, along with Mannock, was Petitioner should be reclassified to a CRSA. *Id.* at 101. She concluded Petitioner did not perform a significant role in the departmental budget process—a function of a CLTCR. *Id.* at 104.

Racca testified that he was Petitioner's supervisor and an Administrator of Medical Services, which directed the Unit. Hr'g Tr. 92, June 05, 2012. Racca proposed that Berretto would learn about hospital settlements, while Abraham learned about rate setting. Following the announcement of changes to the state retirement system, effective July 1, 2008, Gongoleski and Rego decided to retire, and “the senior staff in the rate setting unit evaporated essentially.” *Id.* at 102-03. As Administrator, Racca “had the responsibility to keep the unit running . . . everyone was asked to step up and take on additional responsibilities.” *Id.* at 103-05. Though Gongoleski had been a CLTCR, there was no plan to fill the position. *Id.* at 107. Significantly, Racca told them he would assume responsibility for “certain administrative responsibilities that [he] would have expected the [CLTCR] to handle, including personnel matters, [and] dealing with HR[.]” *Id.*

---

<sup>3</sup> Joseph is a Human Resources Analyst II for the Department of Administration (DOA), who conducted the primary field audit for the Petitioner's Classification Questionnaire and offered testimony at the April 10, 2012 and May 15, 2012 hearings of the PAB.

at 107-08. Racca testified he allowed Petitioner and Berretto to sign each other's timesheets while he was on vacation, but, upon returning, he told them to cease signing each other's time sheets, and he signed them thereafter. *Id.* at 110-11.

Petitioner submitted a desk audit, believing himself to be “deserving of the . . . chief long term care, grade 39, position.” *Id.* at 112-13. Racca—Petitioner's immediate supervisor—who acted as department head when the Medicare Director position was vacant, did not believe Petitioner should be reclassified as a CLTCR (Pay Grade 39) but rather as a CRSA (Pay Grade 35). *Id.* at 116-19. Racca testified that Gongoleski, prior to retirement, wrote requests for personnel when a vacancy occurred and, following his retirement, Racca (not Petitioner) would handle such requests. *Id.* at 121. Racca testified he sought data and input from Petitioner, and “that's what the chiefs are for, to provide that kind of support[,]” and that Petitioner did not plan and administer a highly specialized program area of a statewide medical care program, a requirement of the CLTCR position. *Id.* at 123-24. Petitioner was not involved in either planning or administration at the time of his desk audit, and his role was to “provide data to support the decisions that were being made at the administrative level and above.” *Id.* at 124-25. Racca testified that determination of nursing home rates could not be changed without his approval, and, if they were to be changed, Petitioner's role would be to meet with Racca “and discuss what we would have to do to change the State plan.” *Id.* at 127.

As to the Unit budget, Racca explained that Petitioner's role was to “supply the data that would be necessary to prepare that budget. How that budget was finalized would not be within his purview.” *Id.* at 130. Racca testified Petitioner was not “assisting in the preparation of the budget for the long term care area[,]” did not participate in departmental budget hearings, and did not

testify before legislative committees. *Id.* at 135-36. Racca believed both Petitioner and Berretto should be reclassified to the CRSA position (Pay Grade 35). *Id.* at 138.

Furthermore, Racca confirmed that following Gongoleski's retirement, no one took over his role as CLTCR, and the position was not filled. *Id.* at 147. Racca testified to his plan to have the two chief "human service business officers running the unit." *Id.* According to Racca, following the retirement of Gongoleski, "[t]he operational day-to-day was being done by the chief human service business officers, some of it. One aspect that really didn't get done and still isn't done is the appeals made by the nursing homes." *Id.*

Racca decided that following the retirements, Petitioner and Berretto would perform additional duties to ensure the Unit would continue running effectively, and he viewed this as "a temporary arrangement." Hr'g Tr. 12, June 12, 2012. Racca took over Gongoleski's administrative and supervisory responsibilities, including those regarding human resources and budget initiatives. *Id.* at 19. Racca submitted rate setting changes to those higher up in the department. *Id.* at 34-37. Racca concluded that though the organizational chart for the Unit showed the CLTCR position was vacant, he did not plan to fill that position. *Id.* at 57.

Mannock, an OPA Human Resource Supervisor with over twenty years of experience, most of which was in the OPA, supervises the Human Resources Analysts who perform desk audits. *Id.* at 61-63. In June 2009, Petitioner expressed concern to Mannock that Racca "would not be supportive of his bid for re-classification [to the CLTCR position . . . [and] would be biased." *Id.* at 66-68. Thus, Mannock took a more active role than usual in the desk audit. *Id.* at 68-69. While Mannock and Joseph recommended Petitioner be reclassified to a CRSA position, Mannock explained the CLTCR classification was not appropriate because "there were illustrative examples of duties that the employee was not performing, that we couldn't overlook"—the duties

of planning and administration. *Id.* at 77-82. Regarding the Unit's budget, Mannock expressed that "assisting in [the] budget can only be viewed within the context or through the lens of a pay grade 39, chief long term care reimbursement." *Id.* at 86-87.

Mannock testified the OPA, in performing the desk audit, sought "to find the best fit . . . in terms of duties and responsibilities." *Id.* at 93, 97. Mannock explained the CRSA position was most appropriate because the information Petitioner provided and that obtained from the field study "matched up extremely well in terms of the components of the rate setting analyst [position]. The supervision was on target." *Id.* at 98. Mannock approved of Joseph's conclusion that Petitioner should be reclassified as a CRSA and acknowledged Petitioner performed "technical operational supervision of the rate setting unit," and such duties "fall within the umbrella of the planning function." *Id.* at 111, 114-15. Petitioner sought both reclassification to Pay Grade 39 and payment retroactive to when he initially filed for reclassification. *Id.* at 119.

Karen Bachus, Vice President of SEIU Local 580 (Local 580 or Union), testified that persons who are not Union members may not, pursuant to contract, perform Union jobs. She stated that if she had known Gongoleski's supervisory duties were taken over by (non-member) Racca, as claimed by Racca, she would have filed a grievance. *Id.* at 124-26.

Anthony Rego (Rego), who worked for the Unit as a CRSA before retiring in June 2008—and following Gongoleski's retirement worked briefly under Racca's supervision—testified "[w]ith training," a CRSA and a CLTCR can do the job of the other, but "there was a definite distinction between the [two positions.]" *Id.* at 130-31. Immediately prior to retiring, Rego did not know of Gongoleski training Berretto to perform the CLTCR role because that was a separate position. *Id.* at 131-32.



Finally, Barry Rotenberg (Rotenberg), an auditor for the Unit prior to retiring in December 2010, neither had personal knowledge of, nor observed, Racca assuming any administrative duties following Gongoleski's retirement. *Id.* at 134-38. Upon Rotenberg's retirement, Petitioner was running the Unit. *Id.* at 138.

On March 27, 2014, the PAB issued its decision. It denied Petitioner's request to be reclassified as a CLTCR, but found that Petitioner was entitled to the CRSA classification, finding such to be "nearly a perfect fit with the duties and responsibilities Mr. Abraham was performing at the time he filed his reclassification questionnaire." PAB Decision ¶ 596. Petitioner filed his Complaint on April 23, 2014.<sup>4</sup>

## II

### Standard of Review

Pursuant to § 42-35-15, the Superior Court has jurisdiction to review PAB decisions. The statute provides as follows:

"[T]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the 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

---

<sup>4</sup> The Complaint did not name the OPA, or the PAB, and named only the "State of Rhode Island, by and through Richard Licht, in his official capacity as Director of the Department of Administration." *See* Pet'r's Compl. at 1. Thus, the State of Rhode Island (State or Respondent) did not learn of the Complaint until earlier this year, per Def.'s Mem. of Apr. 26, 2017, and argued for dismissal pursuant to Super. R. Civ. P. 41(b)(2), which provides, in pertinent part, that this Court may "dismiss any action for failure of the plaintiff to comply with these rules or any order of court, or for lack of prosecution[.]" This Court denied such motion on June 6, 2017.

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g).

It is well settled in Rhode Island that when our Court is reviewing an agency decision pursuant to § 42-35-15, the review of our Court is limited in scope. *See Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). Thus, the Court “is confined to a determination of whether there is any legally competent evidence to support the agency’s decision.” *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993) (citing *Barrington Sch. Comm. v. R. I. State Labor Relations Bd.*, 608 A.2d 1126, 1138 (R.I. 1992)). This Court must affirm the decision of an agency if the decision is based on competent evidence in the record. *Rocha v. State Pub. Utils. Comm’n*, 694 A.2d 722, 727 (R.I. 1997) (citing *Barrington Sch. Comm.*, 608 A.2d at 1138).

A court must give deference to the findings of an agency. “The law in Rhode Island is well settled that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.” *State v. Cluley*, 808 A.2d 1098, 1103 (R.I. 2002) (quoting *In re Lallo*, 768 A.2d 921, 926 (R.I. 2001)). However, this Court “may reverse, modify, or remand the agency’s decision if the decision is . . . made upon unlawful procedure, is affected by other errors of law, [or] is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 485 (R.I. 1994) (citing § 42-35-15(g) (further citation omitted)).

### III

#### Analysis

##### A

#### **PAB Decision on Reclassification/Fairness of Process**

Petitioner argues that he is entitled to a CLTCR classification because, following Gongoleski's retirement, Petitioner assumed his duties and responsibilities. Therefore, Petitioner maintains that the PAB's decision to classify him as a CRSA is "clearly erroneous," because he assumed Gongoleski's duties when he retired in June of 2008. Petitioner also claims the decision—that he is entitled to be classified as a CRSA effective the date of the PBA's decision, and not that of his reclassification—is "arbitrary and capricious," and he is thus entitled to compensation at the Pay Grade of 35 (or 39) retroactive to his classification date of July 31, 2009.

The record demonstrates that Petitioner sought the CLTCR position (Pay Grade 39), but was reclassified as a CRSA (Pay Grade 35). One duty of a CRSA is to "plan, supervise and review the work of a professional staff engaged in rate setting procedures[,] including cost studies, research analyses and field audits of skilled nursing and intermediate care facilities[.]" PAB R. at 125, Definition of Class Code 02698500. A CRSA must "be responsible for the development, modification and administration of a reimbursement formula to be used as the standard in rate setting determinations . . . [and] be responsible for determining rates of payment for service[,] delivered in accordance with principles of reimbursement or funding principles[.]" *Id.* Finally, a CRSA shall "conduct rate appeal hearings and exit audit conferences as required[,] and to do related work as required." *Id.*

Conversely, a CLTCR is expected "[t]o be responsible for assisting in the planning and administration of a highly specialized program area of a . . . statewide medical care program for

eligible recipients of medical assistance[.]” *Id.* at 129. A CLTCR also must “supervise and direct the activities of this specialized program area[,] and to do related work as required.” *Id.*

The PAB found Joseph’s description of the desk audit process “adequate, but [they] placed much more weight on the testimony of Dr. Mannock, Ms. Joseph’s supervisor[.]” PAB Decision ¶ 373. The PAB emphasized that “this was not an effortless case[,] [and] Dr. Mannock . . . worked through the complexities . . . and made the final recommendation of a Pay Grade 35 understandable[.]” *Id.* at ¶¶ 374-75.

The PAB was “very impressed with the professionalism and straight forward, honest testimony of Ralph Racca[,]” who testified that Petitioner should be classified as a CRSA (Pay Grade 35). *Id.* at ¶ 483. It noted:

“His testimony conformed to and expanded upon the statement he attached in response to question 32 of Mr. Abraham’s classification questionnaire in which he did not support Mr. Abraham’s request for reclassification to the Chief, Long-Term Care Reimbursement position (Pay Grade 39), but did support his reclassification to Chief Rate Setting Analyst (Pay Grade 35).” *Id.*

It further found that “at no point did Mr. Racca ever intend to fill the position of Chief, Long-Term Care Reimbursement (Pay Grade 39).” *Id.* at ¶ 485. The record demonstrates that Racca’s testimony established a basis for the PAB to conclude that Racca was credible in his assertion that Petitioner should be reclassified as a CRSA, not a CLTCR. *See Hr’g Tr.* 119-38, 146-48, June 5, 2012.

The PAB noted the testimony of Mannock, finding he “was more directly involved in Mr. Abraham’s classification questionnaire than is usual in most desk audits.” PAB Decision ¶ 493. Joseph and Mannock, working “hand in hand,” concluded Petitioner should be reclassified to a CRSA and that Petitioner was not fulfilling the duties of a CLTCR because he “did not fulfill the portion of the spec. dedicated to administration.” *Id.* at ¶¶ 508, 510, 512. The PAB attributed to

Mannock “significant credibility” and found his testimony “straight forward, understandable, and showed the lengths to which the state went to make sure that the reclassification process for Mr. Abraham was fair, thorough, and well reasoned.” *Id.* at ¶¶ 541-42. The PAB observed that Mannock “went significantly above and beyond what is normally done in a desk audit/reclassification and worked hand-in-hand with Ms. Joseph on this reclassification desk audit . . . result[ing] in a detailed, thorough, and well reasoned recommended upgrade from Pay Grade 33 to Pay Grade 35.” *Id.* at ¶ 544.

Conversely, the PAB found Berretto to be a “biased, self-interested witness” and gave “little weight to his testimony.” *Id.* at ¶ 550. Berretto had testified he “assum[ed]” Petitioner would be taking over Gongoleski’s position after retirement. *Id.* at ¶ 546. Noting that he and Petitioner “are obviously friendly with each other[,]” it concluded its analysis by finding his testimony to be “over the top and in most respects not credible.” *Id.* at ¶¶ 550, 552 (internal quotation marks omitted).

The PAB found the testimony of Bachus, Union Vice President, not to be relevant. The record reflects that Bachus provided no testimony as to Petitioner’s job duties, only her objection to a non-union employee performing the duties of the CLTCR position. Hr’g Tr. 124-29, June 12, 2012. Similarly, the PAB did not give weight to the testimony of Rego, a CRSA who retired in June 2008 who, prior to his retirement, was working with Berretto, with Petitioner working primarily with Gongoleski. PAB Decision ¶¶ 563-67. “However, Mr. Abraham’s classification questionnaire was filed on July 31, 2009.” *Id.* at ¶ 569. Accordingly, the PAB found his “testimony of what occurred . . . up through [June of] 2008 is irrelevant as to what duties and responsibilities were being performed by Mr. Abraham in July of 2009,” and “this Board [thus] gives no weight to the testimony of Mr. Rego.” *Id.* at 570.

With respect to the testimony of Rotenberg, the former auditor testified that following Gongoleski's retirement, he did not observe Racca taking on administrative duties or know whether such had taken place. *Id.* at ¶¶ 571-73. The PAB found he “had no personal knowledge of the issues in this case” and therefore gave “no weight to the testimony of Mr. Rotenberg.” *Id.* at ¶¶ 577-78.

After thoroughly examining the extensive witness testimony of the PAB and the record that developed at the OPA, AA levels, as well as the reclassification itself, the PAB concluded that Joseph and Mannock “gave this reclassification questionnaire a detailed, thorough analysis. They went substantially above and beyond the usual desk audit analysis . . . [and Mannock was] highly credible, trained, educated, and well-qualified in this specialized area.” *Id.* at ¶ 583.

It is well settled in Rhode Island that when reviewing an agency decision, this Court “must uphold the agency’s conclusions when they are supported by legally competent evidence on the record.” *Interstate Navigation Co. v. Div. of Pub. Utils.*, 824 A.2d 1282, 1286 (R.I. 2003) (citing *Rocha*, 694 A.2d at 725). The PAB conducted a hearing over the course of five hearing dates, with over 600 pages of witness testimony from nine witnesses. The PAB addressed and analyzed the testimony of all of the witnesses and found those of the Respondent to be more credible than those of the Petitioner. *See State Dep’t of Envtl. Mgmt. v. Admin. Adjudication Div.*, 60 A.3d 921, 924 (R.I. 2012) (“[A] Court does not substitute its judgment for that of the agency concerning the credibility of witnesses[.]”) (further citation omitted).

## **B**

### **Bias of the PAB**

Petitioner in his reply brief argues that “[t]he [PAB’s] bias in favor of Dr. Mannock led them to blindly hold his testimony in high regard” and further argues that this bias “is

demonstrated by the fact that the [PAB] gave more weight to his testimony than Ms. Joseph's testimony when Dr. Mannock actually relied on the information in Ms. Joseph's analysis in his testimony." Pet'r's Reply Br. at 1.

The PAB, as noted above, specifically found that "Ms. Joseph and Dr. Mannock (working together) gave this reclassification questionnaire a detailed, thorough analysis." PAB Decision ¶ 583. It was not unreasonable for the PAB, cognizant of the collaboration of Mannock and Joseph, to give credence to the testimony of Joseph and give even more credence to that of Mannock, given the credentials of the latter. *Id.* at ¶ 544. It is well settled that a court reviewing an agency decision shall "not substitute its judgment for that of the agency concerning the credibility of witnesses[.]" *State Dep't of Env'tl. Mgmt.*, 60 A.3d at 924 (quoting *Tierney v. Dep't of Human Servs.*, 793 A.2d 210, 213 (R.I. 2002)).

Petitioner further argues that "[t]he State praises its own witnesses for the clarity and eloquence of their testimony," while characterizing Petitioner as a "rogue" employee, "operating without regard to his superiors." Pet'r's Reply Br. at 1-2. A party claiming bias in an administrative hearing "must adduce evidence that: (1) the same person(s) involved in building one party's adversarial case is also adjudicating the determinative issues; and/or (2) other special circumstances render the risk of unfairness intolerably high." *Kent Cty. Water Auth. v. State Dep't of Health*, 723 A.2d 1132, 1137 (R.I. 1999) (citing *La Petite Auberge, Inc. v. R.I. Comm'n for Human Rights*, 419 A.2d 274, 285 (R.I. 1980)). In *Kent Cty. Water Auth.*, the Court specifically rejected "the petitioner's argument that the hearing officer's mere status as a DOH employee rendered the risk of unfairness intolerably high[.]" *Id.* at 1137. Here, Petitioner argues the PAB has a bias in favor of the witnesses for Respondent because of their mutual employment with the State. Our Supreme Court has rejected such argument and held that "to do otherwise would mean

that no government adjudicator in this state could sit in judgment on any case involving his or her employer.” *Id.* at 1137-38. Essentially, “virtually all administrative adjudications involving governmental entities . . . would grind to a halt.” *Id.* at 1138. As explained above, the PAB examined the witnesses’ testimony and made credibility determinations. Absent clear error, this Court is bound by such determinations. This Court, therefore, will uphold the reclassification decision of the PAB.

## C

### **Retroactive Reclassification**

Petitioner also contends the decision of the PAB not to award compensation at the Pay Grade of 35 (or 39) retroactive to his classification questionnaire, July 31, 2009, is arbitrary, capricious, and constitutes an error of law. Petitioner asserts the PAB, in declining to award a higher pay grade retroactively, violated the Personnel Rules of the State. Specifically, Petitioner argues Rule 4.0217 is determinative of the issue.<sup>5</sup> According to Petitioner, this Rule requires the conclusion that he is entitled to retroactive compensation at a Pay Grade of 35 (or 39).

The State argues the PAB’s decision regarding retroactive compensation should be upheld, as “Mr. Abraham specifically asked in writing that the upgrade to Pay Grade 35 not be implemented.” PAB Decision ¶ 154. Respondent also argues that rather than the Personnel Rule cited by Petitioner, whether Petitioner is entitled to retroactive compensation is actually controlled by the Collective Bargaining Agreement (CBA) between his Union and the State (580 CBA).<sup>6</sup>

---

<sup>5</sup> The Rule provides, in pertinent part, “[w]hen an employee is required to work in a higher class of position for a period of eleven (11) consecutive days or more, or for any number of days that may be stipulated in a particular union contract, such employee shall receive the lowest salary rate of that higher class which will provide a pay increase of at least one step over his/her present base rate retroactive to the first day of such assignment.”

<sup>6</sup> The 580 CBA provides, in pertinent part: “When an employee is required in writing by the appointing authority or his/her designee to work in a higher class of position for a period of more



The State argues Petitioner is not entitled to retroactive compensation because he was not directed “in writing” to perform the duties of a higher classification and further argues he sought reclassification due to an absence of written instruction regarding his new responsibilities.

Job classification issues are governed by the State Personnel Rules and are expressly excluded from the grievance and arbitration procedures in the CBA. CBA Article 30. The Personnel Rules clearly and unambiguously provide that where an employee is assigned duties substantially encompassing those of a higher classification, the employee is entitled to a pay adjustment retroactive to the date of assignment. State Personnel Rule 4.0217. In this case, the Petitioner’s desk audit request was accompanied by the recommendation of his supervisor supporting his reclassification as a CRSA (Pay Grade 35). The OPA, after investigating Petitioner’s desk audit request, concluded that the Petitioner should be classified as a CRSA, effective August 2, 2009, the date of the desk audit request. The OPA decision was affirmed on appeal by the AA. In upholding the decision of the AA with respect to the appropriate job classification of the Petitioner, the PAB cited approvingly testimony that the Petitioner’s duties “matched up extremely well” with the job description of a CRSA. PAB Decision ¶ 524. Thus, at all levels of the administrative review process, the evidence established conclusively that the Petitioner, at least since the time of his desk audit request, was performing the duties of a CRSA, a classification two pay grades higher than his. *See id.* at ¶¶ 584, 588, 596, 606, 608-09, and 616.

After a careful examination of the record, the Court finds no justification for the PAB denying the Petitioner retroactive reclassification and compensation other than to penalize him for his dogged pursuit of the process made available to him under the State Personnel Rules—an

---

than three (3) consecutive days, such employee shall receive the lowest salary rate of that higher class which will provide a salary increase over his/her present rate retroactive to the first day of such assignment.”

inclination this Court cannot condone. For that reason, the Court finds the PAB's decision to refuse retroactive application to the Petitioner's reclassification to be unreasonable and an abuse of the Board's discretion. *See* § 42-35-15(g).

#### **IV**

#### **Conclusion**

This Court has reviewed the entire record before it. The Court finds substantial evidence to support the PAB's decision that Petitioner was not entitled to reclassification to a CLTCR at Pay Grade 39 and reclassifying the Petitioner as a CRSA at Pay Grade 35. In those respects, the PAB's decision is affirmed. However, the record also reveals that the PAB's determination that Petitioner was not entitled to retroactive compensation contradicts its own findings. The Court, therefore, finds that the decision of the PAB to deny the Petitioner retroactive compensation is not supported by the reliable, probative, and substantial evidence on the record, and is an abuse of discretion, clearly erroneous, and affected by error of law. Substantial rights of the Petitioner have been prejudiced. Accordingly, the portion of the March 27, 2014 decision of the PAB which denied retroactive compensation to the Petitioner is reversed. Counsel shall prepare appropriate judgment for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

---

**TITLE OF CASE:** Arthur Abraham v. State of Rhode Island, by and through Michael DiBiase, in his official capacity as Director of the Department of Administration

**CASE NO:** PC-2014-2048

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** January 24, 2018

**JUSTICE/MAGISTRATE:** Gallo, J.

**ATTORNEYS:**

**For Plaintiff:** Richard A. Pacia, Esq.  
Mark P. Gagliardi, Esq.

**For Defendant:** George H. Rinaldi, Esq.