STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: OCTOBER 17, 2012)

CITY OF PAWTUCKET	:	
	:	
V.	:	**C.A. No. PC-2011-7205**
	:	
NICHALAS LAPRADE	:	

DECISION

TAFT-CARTER, J. Before the Court is Appellant City of Pawtucket's (the "City") complaint to review the Final Administrative Order of a Law Enforcement Officer's Bill of Rights Hearing Committee (the "Committee"). The complaint asks this Court to reverse or modify the July 18, 2011 order of the Presiding Justice of the Superior Court and to reverse or modify the Committee's decision finding for the Respondent, Officer Nichalas Laprade ("Laprade"). Also before the Court is the Officer's answer and counterclaim, requesting that the appeal be denied and dismissed. Jurisdiction is pursuant to G.L. 1956 § 42-28.6-12.

I

Facts and Travel

On May 3, 2011, Laprade, an officer of the Pawtucket Police Department (the "Department"), was charged by the City and the Department's Office of Professional Standards/Internal Affairs with an eighteen-count complaint alleging violations of

Departmental rules and regulations.[1] The filing of the complaint against Laprade stems from his off duty conduct on November 9, 2010. On that date, passengers in a vehicle driving alongside Laprade's vehicle, observed him masturbating and exposing himself while driving. After an investigation into the incident, criminal charges were lodged against Laprade. On February 18, 2011, he was convicted of Indecent Exposure—Disorderly Conduct, § 11-45-2, in the Sixth Division District Court. There was no appeal taken from the conviction. Other incidents which are also a basis of the complaint against Laprade resulted from his being asleep while on duty on two occasions. Laprade was notified in writing on May 3, 2011 of the disciplinary charges as well as the City's recommendation that he be terminated from his employment. See § 42-28.6-4.

After receipt of the May 3, 2011 complaint and notice, Laprade timely exercised his right to request a hearing, as provided for in the LEOBOR, see § 42-28.6-4(c). A three-person hearing committee was convened in accordance with § 42-28.6-4(d)-(f), and a hearing was scheduled for July 20, 2011, which was within the deadline imposed by § 42-28.6-5(b).

The LEOBOR requires that the City, within ten (10) days before the initial hearing date, provide the officer under investigation with a list of witnesses, copies of written and recorded statements, and all documents to be offered as evidence. In this instance the disclosure was to take place on or before July 10, 2011. See § 42-28.6-5.[2]

[1] Laprade was charged with one count for violating the Code of Ethics; five counts for conduct unbecoming of an officer; one count of criminal conduct; two counts of failing to obey orders; one count of failing to provide a current address and phone number; one count for neglecting duty to obey; one count for insubordination; one count for exerting undue influence on others; one count for neglect of duty; one count for failing to maintain adequate fitness for duty; one count for incompetence; one count for failure to satisfy job description; and one count for untruthfulness. City's LEOBOR Complaint, May 3, 2011.

[2] Specifically, § 42-28.6-5(c), (e) states: "Not less than ten (10) days prior to the hearing date, the charging law enforcement agency shall provide to the law enforcement officer:

The City's disclosure came one day after the statutory deadline and was therefore untimely. In defending its untimely disclosure, the City argues that its representative to the committee was vacationing until July 11, 2011 and the officer saddled with the responsibility was inexperienced with the LEOBOR procedures. The disclosure error was noticed upon the return of its representative, and thereafter, the documents were produced. As a result of the untimely disclosure, the City was prohibited from introducing its evidence at the July 20 hearing. See § 42-28.6-5(e).

In an attempt to cure the bar to introducing its evidence, the City sought to extend the July 20 hearing date (App. Br. Ex. C), which was denied by the Committee. Shortly thereafter, the City requested that the Superior Court Presiding Justice intervene to reschedule the Committee's July 20 hearing to a later date pursuant to § 42-28.6-5(b).[3] In its July 14, 2011 request, the City argued that good cause existed because of a scheduling conflict. The City also argued that a continuance was necessary to cure the untimely disclosure.

A hearing was held on July 18, 2011 to consider the request. After due consideration, the Presiding Justice issued an order (the "Order") denying the City's request for an extension of the hearing date. In the Order, the Presiding Justice stated that

---

> (i) A list of all witnesses, known to the agency at that time, to be called by the agency to testify at the hearing;
> (ii) Copies of all written and/or recorded statements by such witnesses in the possession of the agency; and
> (iii) A list of all documents and other items to be offered as evidence at the hearing.
>
> . . .
>
> (e) Failure by either party to comply with the provisions of subsections (c) and (d) of this section shall result in the exclusion from the record of the hearing of testimony and/or evidence not timely disclosed in accordance with those subsections."

[3] Section 42-28.6-5(b) gives the Presiding Justice the ability to extend the thirty day-deadline within which a hearing must be held after the selection of the neutral chair person "for good cause shown."

"the City's failure to present its witness and evidence list ten days prior to the hearing does not represent good cause for an extension of the hearing date." (July 18, 2011 Order.) Sympathetic to City Counsel's personal conflict, the Presiding Justice ordered the parties to agree on another date for the hearing; however for timing purposes, the date of the first hearing was to remain as July 20, 2011.

A hearing was then scheduled for July 22, 2011. On the day of the hearing, the City renewed its request to adjust the hearing date for timing purposes so as to permit the City to admit its evidence. Again, the request was denied. Thereafter, a hearing was held on September 8, 2011, at which time the City called its first witness to which Laprade objected, arguing that the City was prohibited from introducing any witnesses or evidence to the Committee due to the City's untimely disclosure. See § 42-28.6-5(c).

The City argued that the hearing date of July 22, 2011 was not a hearing as defined by § 42-28.6-1(3) because evidence was not presented. Rather, the City maintained that this first hearing date was for logistical planning. Given that the actual introduction of evidence did not occur until the September 8, 2011 hearing, the City reasoned that for timing purposes, the September 8, 2011 hearing date governs, and not the July 20, 2011 date. Thus, the City argues, the disclosure of evidence was timely.

The Committee ruled on September 13, 2011 that the July 22, 2011 hearing met the definition of hearing as defined in § 42-28.6-1(3). Accordingly, Laprade's motion to exclude the City's evidence and witnesses was granted. (Dec. 14, 2011 Committee Decision at 2.) As a result, the City withdrew nine of the eighteen charges it lodged against Laprade without prejudice because it was unable to substantiate them without the

evidence.[4] The City believed that it could proceed with the remaining charges as long as the Committee took judicial notice of Laprade's criminal conviction.

The Committee denied the City's request to take judicial notice of Laprade's conviction by a 2-to-1 vote. In its decision, the Committee noted that the Chair would have been inclined to take judicial notice of Laprade's conviction if the Committee's Court-appointed counsel "had agreed with the City's argument." (Dec. 14, 2011 Committee Decision at 17.) Thereafter, with no evidence in the record, the Committee found for Laprade on all the remaining charges by a vote of 2-to-1. (Dec. 14, 2011 Committee Decision at 3, 14-17.) The City now appeals.

On appeal, the City contends that the Committee's refusal to continue the July 20, 2011 hearing and the Presiding Justice's subsequent Order denying the request amounted to an abuse of discretion. These rulings, it is argued, ensured that the case would be decided on a technicality rather than on its merits. The City contends that each tribunal's refusal to extend the initial July 20, 2011 hearing date was an abuse of discretion because the City was at all times acting in good faith and there was ample opportunity to remedy procedural shortcomings. The City further contends that the Presiding Justice, by virtue of her role under the LEOBOR, is an extension of the Committee itself. Accordingly, the City argues that the Presiding Justice's Order amounts to a reviewable Committee decision rather than an Order of the Superior Court. The City also appeals the Committee's refusal to take judicial notice of Laprade's conviction, asserting that the Committee's denial was based on the erroneous advice of appointed counsel.

[4] Specifically, the City withdrew charges concerning failure to obey orders; failure to provide a current address and phone number; exerting undue influence; neglect of duty; untruthfulness; and incompetence in part.

In response, Laprade contends that it was not an abuse of discretion for the Committee to deny the City's request for a continuance because the ten (10) day disclosure deadline is an integral part of the overall statutory right to a fair hearing afforded every officer accused of misconduct. Laprade asserts that the Presiding Justice's Order is wholly separate and binding upon the Committee and it is an interlocutory order of the Superior Court. As such, Laprade contends that the law of the case doctrine prohibits this Court from reviewing the Presiding Justice's Order. With respect to the issue of judicial notice, Laprade responds that decisions to take judicial notice are a matter of Committee discretion in the LEOBOR context and that the Committee did not abuse that discretion or decide the issue on erroneous legal grounds.

II

Standard of Review

The LEOBOR is the "exclusive remedy for permanently appointed law-enforcement officers subject to proposed disciplinary action." City of Pawtucket Police Div. v. Ricci, 692 A.2d 678, 682 (R.I. 1997). The LEOBOR affords an officer facing potential demotion, transfer, dismissal, loss of pay, reassignment and the like, a hearing before a committee made up of three active or retired police officers. See § 42-28.6-4. The committee is not bound by the recommendations of the charging authority and may call its own witnesses, make findings of fact and "sustain, modify, or reverse the charges of the investigating authority." City of East Providence v. McLaughlin, 593 A.2d 1345, 1348 (R.I. 1991).

An officer dissatisfied with a committee's decision may appeal to the Superior Court pursuant to § 42-28.6-12, which states that for an appeal, "the hearing committee shall be deemed an administrative agency and its final decision shall be deemed a final order in a contested case." Sec. 42-28.6-12(a). Thus, this Court's review of a committee's decision is the same as if the decision had been rendered by an administrative agency under § 42-35-15 of the Administrative Procedures Act. See id. Accordingly, when reviewing the decision of a LEOBOR committee,

> "[t]he court shall not substitute its judgment for that of the [committee] as to the weight of the evidence on questions of fact. The court may affirm the decision of the [committee] 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 [committee];
> (3) Made upon unlawful procedure;
> (4) Affected by other error of 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).

As with any agency decision, a review of a committee's findings is "both limited and highly deferential." Culhane v. Denisewich, 689 A.2d 1062, 1064 (R.I. 1997). The court only examines the record to determine "whether any legally competent evidence exists within the record as a whole, or [] reasonable inferences may be drawn therefrom, to support the decision . . . or whether [the committee] committed error of law in reaching

its decision. Elias-Clavet v. Bd. of Review, 15 A.3d 1008, 1013 (R.I. 2011). Legally competent evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means an amount more than a scintilla but less than a preponderance." Foster-Glocester Reg. Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004). Questions of law are not controlling on a reviewing court, however, and are reviewed de novo. See Lynch v. Rhode Island Dep't of Envtl. Mgmt., 994 A.2d 64, 70 (R.I. 2010).

III

Analysis

A

Abuse of the Committee's Discretion

Mindful that a LEOBOR Committee is a creature of statute, this Court notes that "[w]hen construing a statute, [the Court's] 'ultimate goal is to give effect to the purpose of the act as intended by the Legislature.'" Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 258 (R.I. 2011) (quoting D'Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)). When the language of the statute is "clear and unambiguous," the Court gives "the words of the enactment their plain and ordinary meaning." Kulawas v. Rhode Island Hosp., 994 A.2d 649, 652 (R.I. 2010). The plain meaning approach is not absolute, however, and it is "entirely proper . . . to look to the sense and meaning fairly deducible from the context." In re Brown, 903 A.2d 147, 150 (R.I. 2006). Thus, the Court considers "the entire statute as a whole," and each section must be interpreted "in the context of the entire statutory scheme." Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012) (quoting Generation Realty, LLC, 21 A.3d at 259). Further, it is incumbent on the

Court to ensure its interpretation does not "reach an absurd result." Kaya v. Partington, 681 A.2d 256, 261 (R.I. 1996).

Whether an administrative agency's decision is an abuse of discretion is governed by the appellate standard set forth in § 42-35-15(g)(6). Agency decisions are upheld "as long as the administrative interpreters have acted within their authority to make such decisions and their decisions [are] rational, logical, and supported by ample evidence." Goncalves v. NMU Pension Trust, 818 A.2d 678, 682-83 (R.I. 2003). Accordingly, an agency's decision is neither arbitrary, capricious nor an abuse of discretion "'when it is possible to offer a reasoned explanation, based on evidence, for a particular outcome.'" Id. at 683 (quoting Coleman v. Metro. Life Ins. Co., 919 F. Supp. 573, 581 (D.R.I. 1996)).

The disclosure provision of the LEOBOR is specific. It states that disclosure of the charging authority's evidence shall take place "[n]ot less than ten (10) days prior to the hearing date." Sec. 42-28.6-5. This procedural requirement serves the underlying purpose of the LEOBOR; namely to afford both sides a fair and transparent opportunity to present their evidence. See In re Denisewich, 643 A.2d 1194, 1198 (R.I. 1994) (recognizing that the Committee had an obligation and duty to reconvene to consider newly available evidence). Further, the statute provides a clear remedy for nondisclosure. It states that failure to comply with the disclosure deadline will result in exclusion from the record of that material not timely disclosed. See § 42-28.6-5(e) ("Failure by either party to comply with the [disclosure deadlines] shall result in the exclusion from the record of the hearing of testimony and/or evidence not timely disclosed.").

The City seeks to circumvent the mandatory disclosure deadline, as well as the remedy afforded an officer for a city's failure to produce documents pursuant to the statute, by requesting a continuance of the hearing date. Initially, in a July 12, 2011 email to Chairman Lee, the City cited "a conflict with scheduling" in an attempt to secure a continuance. See App.'s Br. Ex. C. Thereafter, on July 14, 2011, the City petitioned the Presiding Justice for a continuance of the hearing date, stating that in addition to a scheduling commitment the continuance was also necessary to allow the City to admit its evidence in accordance with the ten-day disclosure deadline. (App.'s Br. Ex. D.)

What the City fails to appreciate and recognize is that on June 23, 2011 the disclosure deadline was set, as was the July 20, 2011 hearing date. It was not until after the disclosure deadline had passed that the City requested an extension. Regardless of the experience of the officer in charge, the City was required to either timely comply with discovery or timely request a continuance. Neither the disclosure date nor the City's options relating to the date were a mystery. The City's contention that it is entitled to relief from the very consequences that flowed from its own preventable omissions is unsound. To allow such an extension would render the LEOBOR's ten-day disclosure deadline meaningless. Goncalves, 818 A.2d at 682-83; see also Beaudoin v. Petit, 409 A.2d 536, 540 (1979) (noting importance of considering underlying purpose of a statute when interpreting its provisions and stating "[w]e will not construe a statute to achieve meaningless or absurd results"). Thus, the Committee's denial of a continuance is "rational" and capable of a "reasoned explanation." Goncalves, 818 A.2d at 682-83. It is clear to the Court, therefore, that the Committee's denial of the continuance was neither in excess of statutory authority nor an abuse of discretion.

The City next claims that its error and associated consequences did not come to fruition until the July 20, 2011 hearing date. The City contends that the Committee's denial of a continuance before the occurrence of such error on July 20, 2011 was an abuse of its discretion given the important interest of cases being decided on their merits rather than on procedural technicalities. Thus, the City claims its request for a continuance was a means for avoidance of error rather than relief from error that had already occurred.

A party's prohibition from presenting its evidence when it fails to meet the ten (10) day disclosure deadline is an integral part of the LEOBOR framework. Litigants are to comply with the rules to ensure a timely and fair proceeding. The LEOBOR clearly requires compliance with the disclosure deadline, and the City did not comply. See § 42-28.6-5(c).

Accordingly, the Court finds that the Committee's denial of the City's request for a continuance is not in excess of its statutory authority or an abuse of discretion. Its denial is supported by competent evidence in the record and is reasonable in light of the circumstances before it at that time.

B

The Presiding Justice's Order

The LEOBOR is a unique statute in that it delineates a direct means of seeking judicial intervention from the Presiding Justice in those instances where a LEOBOR committee is either unable to make a decision or is bound by approaching statutory deadlines. For example, when the appointed committee members are unable to select a neutral chairperson, the Presiding Justice may appoint the chair. See § 42-28.6-1(2)(i).

Similarly, when a charged officer has failed to request a hearing within the five (5) day deadline imposed by the LEOBOR, the Presiding Justice has the ability to waive the deadline and allow for the proceedings to move forward. See § 42-28.6-4(c). Likewise, when the Committee is unable to render a written decision within the mandated thirty (30) days after the conclusion of a hearing, it is the Presiding Justice who can nevertheless extend the time needed. See § 42-28.6-5(b). Looking to the statutory scheme these provisions establish, the Court finds that these, as well as similar provisions, demonstrate a legislative intent to streamline appealable questions of procedure during the adjudicative process so as to avoid prolonged and costly appeals on questions of technicality. See generally Generation Realty, LLC, 21 A.3d at 262 ("It is a fundamental rule of statutory construction, however, that we must consider a statute in its entirety, 'not as if each section were independent of all other sections.'") (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)). A fair and efficient hearing is particularly important given that the LEOBOR is the sole recourse afforded officers to challenge the charges against them. See § 42-28.6-15 ("The remedies contained herein shall be the sole and exclusive remedies for all law enforcement officers subject to the provisions of this chapter."). Likewise, it is important that the Superior Court may afford firm and expeditious answers to technical questions of procedure when Committees composed ad hoc are subject to review as administrative agencies.

Pursuant to the LEOBOR, the Presiding Justice therefore has the statutory authority to grant the Committee relief from certain obligations with respect to deadlines, as well as to order it to take certain actions. Here, the Presiding Justice conducted a hearing on the City's request for a continuance. A two-page Order summarizing the

facts and charges against Laprade, giving a brief discussion of the law and application to the facts, and a conclusion ordering the Parties to set July 20, 2011 as the hearing date for timing purposes was issued. The subject of the Presiding Justice's Order in this case was the City's interlocutory "Petition to Extend the Date Within Which Hearings Must Commence." See § 42-28.6-5(b). Said Order is not reviewable under the APA jurisdiction of this Court.

The Order of the Presiding Justice is clearly interlocutory in nature. The law of the case doctrine provides that "after a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling." Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 677 (R.I. 2004). The doctrine is intended to ensure "the stability of decisions and avoid[] unseemly contests between judges that could result in a loss of public confidence in the judiciary." Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 682 (R.I. 1999). As such, this Court does not have jurisdiction or authority to review the Presiding Justice's Order. Such a review is prohibited by the law of the case doctrine. Thus, this Court is prohibited from review of this order pursuant to the law of the case doctrine.

B

Judicial Notice

The City additionally asserts that despite its inability to submit evidence against Laprade, the Committee should have taken judicial notice of Laprade's February 18, 2011 conviction. Indeed, the City contends that there was "no rational reason" for the Committee not to judicially notice Laprade's conviction and that in refusing to take

judicial notice, the Committee acted arbitrarily. The City argues that if the Committee takes judicial notice of the conviction, there would be sufficient evidence to sustain the existing charges against Laprade.[5] The City further explains that Counsel to the Committee gave a misguided opinion to the Committee in his November 18, 2011 Memorandum on judicial notice[6] in that he did not adequately convey the discretionary nature of judicial notice under the LEOBOR. This left the Committee to act on the belief that it lacked the legal capacity to take judicial notice of Laprade's conviction. Therefore, it is argued, the decision was based on a material error of law warranting a remand.

In response, Laprade argues that the decision of whether or not to judicially notice his conviction was within the Committee's discretion, and further, that this discretion was not abused. Moreover, Laprade asserts it would have been "improper" for the Committee to take judicial notice of Laprade's conviction because doing so would effectively allow the City to circumvent procedural aspects of the LEOBOR designed to protect the rights of law enforcement officers. Laprade explains that according to the Presiding Justice, the ten (10) day disclosure deadline protects Laprade's statutory rights to a fair hearing and to allow admission of the evidence via an alternative means would defeat those statutory protections. In the alternative, Laprade asserts that the Committee was prohibited from taking judicial notice of his conviction in this case, and therefore that the Committee's refusal to take judicial notice was singularly correct on the merits. Without some form of

[5] Specifically, the City withdrew two charges for lack of obedience to orders, insubordination, exertion of undue influence, failure in duty to obey, lack of fitness for duty, lack of truthfulness, and failure to provide an accurate address and phone number. (Committee Decision at 3.)

[6] In its December 14, 2011 decision, the Committee noted that "[t]he Chair of this Hearing Committee would have been inclined to accept the issue of judicial notice with regards to a finding of guilt in the District Court if the opinion of legal counsel appointed to the hearing panel had agreed with the City's argument." (Dec. 14, 2011 Committee Decision at 17.)

evidence before it upon which to base its taking notice of the conviction, Laprade argues, the Committee was incapable of taking judicial notice of the fact of the conviction.

Section 42-28.6-10 of the LEOBOR states:

> "The hearing committee conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge."

The LEOBOR does not define the term "judicially cognizable facts." The term is referenced, however, in Black's Law Dictionary as part of the definition for "judicial notice," which is "[a] court's acceptance, for purposes of convenience and without requiring a party's proof, of a well known and indisputable fact; the court's power to accept such a fact [is] [a]lso termed judicial cognizance." Black's Law Dictionary 923 (9th ed. 2009) (emphasis added). The taking of "judicial notice," which according to Black's is synonymous with judicial cognizance, is governed by Rule 201 of the Rhode Island Rules of Evidence. Given that committees organized under the LEOBOR act as judicial or quasi-judicial bodies, see Weeks v. Pers. Bd. of North Kingstown, 118 R.I. 243, 246, 373 A.2d 176, 177 (1977), and are therefore "bound by the fundamental principles that are binding upon all judicial bodies," see Morgan v. Thomas, 200 A.2d 696, 698 (R.I. 1964), the Court looks to Rule 201 of the Superior Court Rules of Civil Procedure for guidance to clarify the use of the term "cognizable fact" in the LEOBOR.

In pertinent part, Rule 201(b) states:

> "Rule 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

> (a) *Scope of Rule.* This rule governs only judicial notice of adjudicative facts.
> (b) *Kinds of Facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

It is not unprecedented for courts to take judicial notice of prior judgments that are relevant to cases before them because the fact of a judgment or conviction is readily available to the public via the public records. See, e.g., In re Victoria L, 950 A.2d 1168, 1173 (R.I. 2008); In re Shawn B., 864 A.2d 621, 624 (R.I. 2005). In Rhode Island, "[o]ne aspect of the doctrine of judicial notice is 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). Courts have also taken judicial notice of proceedings occurring both within and outside their jurisdictions so long as "those proceedings have a direct relation to matters at issue." St. Louis Baptist Temple, Inc. v. FDIC, 605 F.2d 1169, 1172 (10th Cir. 1979).

Additionally, it has been held that judicial notice of a conviction is acceptable despite a party's failing to formally introduce evidence of the conviction via a certified copy. For example, in Kowalski v. Gagne, 914 F.2d 299, 305-306 (1st Cir. 1990), the defendant contended that his prior conviction, which was judicially noticed, "was improperly admitted because [the] plaintiff never produced a certified copy of the conviction." Kowalski, 914 F.2d at 305. The Circuit Court held that taking judicial notice of the conviction was not improper under these circumstances, both because it was a judicial record and because the district judge was already familiar with the defendant's

criminal case. Id. at 306. The First Circuit also upheld a Rhode Island pension board's decision to take judicial notice of an appellant's criminal conviction, despite the record being devoid of any details of the prior conviction. Parente v. Town of West Warwick, 868 F.2d 522, 523-524 (1st Cir. 1989).

It is certainly a power in the Committee's discretion to take notice of a judicially cognizable fact. See In re Victoria L, 950 A.2d at 1173; In re Shawn B., 864 A.2d at 624; In re Michael A., 552 A.2d at 369; Kowalski, 914 F.2d at 305-306; Parente, 868 F.2d at 523-524; St. Louis Baptist Temple, 605 F.2d at 1172. The LEOBOR unequivocally states that a Committee's power to take notice of judicially cognizable facts is discretionary. See § 42-28.6-10 ("The hearing committee conducting the hearing may take notice of judicially cognizable facts.") (emphasis added). Laprade's conviction is a judicially cognizable fact because it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, namely the publicly-available court records of this State. As discussed earlier, it is not unprecedented for judicial or quasi-judicial bodies to take judicial notice of prior convictions, even when the record before the tribunal is sparse.

Notwithstanding, this Court is unwilling to conclude that it would have been equitable for the Committee to take judicial notice of Laprade's conviction under the circumstances of this case. The Court finds that the Committee's action in denying the request to take judicial notice of Laprade's conviction was reasonable and did not amount to an abuse of discretion. The equitable issue presented is whether a fact, here the conviction, may be judicially cognizable if the fact is not "capable of accurate and ready determination by resort to sources" because of a prior court order excluding the evidence.

Specifically, the Committee was precluded from reviewing any evidence concerning Laprade's conviction because of the late disclosure. The Superior Court entered an Order dated July 18, 2011, excluding such evidence. In the Presiding Justice's July 18, 2011 Order, she found that "the City's failure to present its witness and evidence list ten days prior to the hearing does not represent good cause for an extension of the hearing date." (July 18, 2011 Order.) As a result, under § 42-28.6-5(c) the City was prohibited from introducing any evidence for inspection by the Committee at Laprade's LEOBOR hearing. The City now contends that the Committee must judicially notice the fact of the conviction even though § 42-28.6-5(c) prevents the Committee from examining proof of the alleged fact in any evidentiary capacity. Even recognizing the prospect that the Committee maintains discretion to judicially notice a fact such as Laprade's conviction as applied under these circumstances, it was eminently reasonable for the Committee to consider the unfairness inherent in the mechanics underlying a decision to do so, and to reject the City's application for judicial notice.

Moreover, taking judicial notice of Laprade's conviction would not only allow the City to circumvent § 42-28.6-5(c), a key procedural element of the LEOBOR designed to protect the rights of law enforcement officers, but also risks running afoul of canons of statutory construction as applied by our Supreme Court. See State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004) ("[W]hen we are faced with statutory provisions that are *in pari materia*, we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope."). It was not error for the Committee, on recommendation of its Counsel, to read § 42-28.6-5(c) *in pari materia* with § 42-28.6-10, the LEOBOR judicial notice statute, and decline to take judicial notice of Laprade's

conviction. This Court does not hesitate to add that under Rhode Island law, there is an aversion to taking judicial notice of facts "essential to the proof of the offense charged" when the disposition of the case turns on a question of judicial notice. See State v. Main, 180 A.2d 814, 818 (R.I. 1962) (stating further that "a trial court may not properly supply essential evidence in a criminal case through an exercise of its powers to take judicial notice of matters that are of common knowledge"). Admittedly, the case before the Committee was not a criminal one, but our Supreme Court has alluded to a comparable principle in civil cases as well. See Caldarone v. State, 199 A.2d 303, 306 (R.I. 1964) (condoning the use of judicial notice in a civil case because the purpose was "not to supply evidence on an essential element of petitioners' case but rather to illustrate the circumstances in light of [the judge's] evaluation of the evidence"). Given that the City's entire case against Laprade would have depended on the Committee's decision to take judicial notice, the Committee's exercise of discretion was fair and reasonable.

Finally, there is no manifest error of law in the written decision of the Committee. The Committee's decision merely states that if the Committee's Counsel "had agreed with the City's argument," the Committee as a whole would have been more receptive to judicially noticing Laprade's conviction. (Dec. 14, 2011 Committee Decision at 17.) The City's argument is aimed at securing judicial notice of Laprade's conviction, and neither the Committee nor the Committee's Counsel is obligated to agree with it. Moreover, the Committee's decision is consistent with a sound exercise of discretion. The Committee had valid reasons to deny the City's request to take judicial notice of Laprade's conviction, and this Court does not find convincing the City's argument that Committee Counsel was misleading on the issue of the Committee's discretion to take

judicial notice. Rather, Committee Counsel's memorandum was entirely advisory in tone, concluding with "[I]t is my recommendation . . . that the City's request [to] take judicial notice . . . be denied."[7] The memorandum presented a reasonable interpretation of the law of judicial notice under the LEOBOR and included a number of valid rationales for the Committee to decline taking judicial notice, some of which have been discussed above. (November 18, 2011 Memorandum to the Committee at 2-11.) Committee Counsel did not advise the Committee that it lacked the discretion or fundamental capacity to take judicial notice of Laprade's conviction. This Court notes in passing that one member of the Committee even remained inclined to take judicial notice of Laprade's conviction, presumably after having read Committee Counsel's memorandum. (Dec. 14, 2011 Committee Decision, Moreau Dissent at 17-19.) Thus the Committee's decision to deny the City's request that it take judicial notice of Laprade's conviction was neither affected by error of law nor an abuse of discretion.

IV

Conclusion

After review of the entire record, the Court finds that the Committee did not abuse its discretion when it denied the City's request for a continuance. The Court also finds that the Presiding Justice's Order is not a committee decision and is not reviewable by

[7] Here are three representative excerpts from Committee Counsel's Memorandum: (1) Page 4 – "The question for the Hearing Committee . . . is not whether it is able or has the authority to take judicial notice of a fact presented by a party in this matter . . . . The question presented for the Hearing Committee's determination is whether exercising the discretion granted to it under R.I.G.L 42-28.6-10 is appropriate under the current facts of this case."; (2) Page 5 – "Therefore, the crux of the question before the Hearing Committee is whether it should exercise its sound discretion and take judicial notice of certain facts as offered by the City."; (3) Page 11 – "[I]t is my recommendation to the Hearing Committee that the City's request that the Hearing Committee take judicial notice of the Sixth Division of the Rhode Island District Court alleged conviction of Officer Laprade be denied."

this Court. The City's appeal of the Committee's decision and the Presiding Justice's Order is accordingly denied. Finally, the Court finds that the basis for the Committee's refusal to take judicial notice of Laprade's conviction was neither affected by error of law nor an abuse of discretion. Substantial rights of the City have not been prejudiced by the Committee in any respect, and the Committee's decision is affirmed.

Prevailing Counsel shall present the Court with an appropriate order for entry.