STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: January 20, 2015]

ANN CAPINERI	:	
	:	
v.	:	**C.A. No. PC-2012-3836**
	:	
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND BOARD	:	

DECISION

MATOS, J. Before this Court is an appeal of final agency action by the Employees' Retirement System of Rhode Island (ERSRI) denying Ann Capineri's (Petitioner or Ms. Capineri) request to purchase retirement service credits (service credits) for the half years that she did not work while engaged in a job share program, working half days for a full year. ERSRI denied Petitioner's request, holding that a job share does not entitle the employee to purchase credit for the unworked portion of the job under G.L. 1956 § 16-16-5. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, the Court affirms the decision of ERSRI.

I

Facts and Travel

A

The Request to Purchase Credits and the Initial Denial

The material facts of this case are not in dispute. Ms. Capineri was employed as a school teacher in the Cumberland school system from 1976 until her retirement in 2009. (Admin. R. 18 at 6.) From 1989 until 1995, Petitioner participated in a fifty percent job

share[1] program that was approved by the Cumberland School Committee. Id. at 6. Ms. Capineri returned to her full-time position beginning the 1995-1996 school year, and she continued full-time until her retirement in 2009. Id. at 6, 10.

In 2005, Petitioner contacted ERSRI, inquiring about purchasing service credit for the years she participated in the job share program. (Admin. R. 1, 2.) ERSRI advised Petitioner that she had received one-half (1/2) year credit for each job share year and was not eligible to purchase credit for time she did not work while participating in the job share program. (Admin. R. 1, 3.) Before her retirement in 2009, Petitioner filed a formal request with ERSRI to purchase six half years of service credit for the fifty percent portions of the six school years in which she did not work, while she job shared. (Admin. R. 9.)

On September 30, 2009, ERSRI, through its Executive Director, Frank Karpinski, denied Petitioner's request to purchase six half school year service credits for the time spent participating in the job share program. (Admin. R. 11.) ERSRI based its denial on several factors including (1) § 16-16-5(d),[2] which states that any job share teacher shall receive credit for the part-time service rendered; (2) Petitioner provided no information to

[1] "Job sharing" as defined in G.L. 1956 § 36-3.1-3(4), a subsection of the "State Employees Alternative Work Schedules Act of 1987," is "a work plan in which two (2) or more persons share one job, jointly assuming responsibility for the job's output." (Emphasis added.)

[2] Section 16-16-5(d) of the Rhode Island General Laws, as amended in 2011, states:

> "Any teacher employed in at least a half (1/2) program including a job share program, or working at least half the number of days that the public schools are required to be in session, shall remain a contributing member and shall receive credit for that part-time service on a proportional basis. The purchase of any remaining program or job share time in which the teacher did not work shall not be permitted."

ERSRI indicating Petitioner took a leave of absence from her job; and (3) Petitioner's employer, the Cumberland School Department, submitted information to ERSRI indicating Petitioner worked half-time in a full-time position and earned one-half of the full-time salary. Id.; see also Admin. R. 6.

B

Petitioner's Appeal to the Hearing Officer

The Petitioner appealed ERSRI's initial denial of her request to purchase, and on January 28, 2011, a hearing on that appeal was held before Hearing Officer Charles M. Koutsogiane (Hearing Officer). (Admin. R. 15 at 1.) The Hearing Officer heard testimony from Ms. Capineri and ERSRI Executive Director Karpinski. (Admin. R. 18 at 6-10.) Ms. Capineri explained the process she went through to begin job-sharing in the 1989-90 school year. Id. at 6. She explained that she and her job share partner each worked for half the day, with a half-hour overlap in the middle of the day for coordination, each working "a little more than half time" to teach, coordinate, and attend meetings. Id. at 8-9. Ms. Capineri testified that the job share program was a "way of staying in touch with education" while she took time to raise her own children. Id. at 9. On cross-examination, Ms. Capineri testified that her teaching position had previously been filled by herself, and during her job share years, the same position was filled by herself and another teacher. Id. at 11-12. She additionally testified that she never sought a formal leave of absence from her employer. Id. at 15.

Mr. Karpinski provided background on the method that teachers' service credits are earned, specifically that teachers receive credits based on days worked, with adjustments for those working partial days. Id. at 22-26. On cross-examination, he

testified that under § 16-16-5, teachers working part-time would accrue credits differently than those working full-time, with their credits accruing based on the number of periods that they work each day. Id. at 29-31. He additionally testified that there is no statutory provision that allows a part-time teacher to purchase service credits for hours beyond those that they worked. Id. at 36. Additionally, several individual and joint exhibits were admitted into evidence including eight letters dated from March 2005 to December 2010 detailing Petitioner's request to purchase service credit and ERSRI's denial of Petitioner's request.

In his decision, issued on January 6, 2012, the Hearing Officer concluded that Petitioner participated in a voluntary, part-time job share program for which she received the appropriate service credit for the work she actually performed and that nothing in the Title 16 statutes grants service credit entitlement, whether awardable or purchasable, for the unworked portion of the job share. Id. at 10, 30-31. Accordingly, the Hearing Officer's decision affirmed ERSRI's denial of Petitioner's requests to purchase service credits. Id. at 32.

C

Retirement Board Hearing and Decision

In accordance with ERSRI regulations,[3] Petitioner appealed the Hearing Officer's decision to the full Retirement Board (Board) on January 18, 2012. Admin. R. 19. At a

[3] Section 10 of Regulation 4, Rules of Practice and Procedure for Hearings, of the Employees' Retirement System of the State of Rhode Island and Municipal Employees' Retirement System of the State of Rhode Island states, in pertinent part:

> "(a) Within twenty-five (25) days after receipt of the Hearing Officer's report, a copy thereof shall be served upon all parties to the proceeding . . . . Each party to the proceeding shall be given the right to make exceptions, to

hearing on July 11, 2012, counsel for Petitioner (Attorney Marzilli) and ERSRI (Attorney Robinson) argued over the definition of a job share and what constitutes a leave of absence under the applicable statutory authority of § 16-16-5. Admin R. 27 at 5-7, 8-12, 15-16.

Attorney Robinson first reiterated the findings of fact and decision that the Hearing Officer made regarding Petitioner's situation. Id. at 5-6. Attorney Marzilli then responded, arguing that "a partial leave of absence is reasonable, [] if not more reasonable, based on the favorable treatment that teachers receive under this retirement statute, § 16-16-5." Id. at 10. Attorney Robinson countered that when he asked Petitioner on cross-examination at the hearing on January 28, 2011 whether she applied for a formal leave of absence, Petitioner answered in the negative. Id. at 14. Attorney Marzilli subsequently asked the Board to make a "determination that it is unfair to allow a teacher that is on maternity leave that takes a complete year off to be treated better than someone who works half time." Id. at 12. Executive Director Karpinski inserted an explanation as to why Petitioner's participation in a job share prohibited her from purchasing additional credits:

> "If your job is a 20-hour job, you get full credit for it. That is a job, you only worked 20 hours. If you are in a half-time

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> file briefs and to make oral arguments before the Retirement Board . . . . After consideration of the decision of the Hearing Officer and such other matters as shall be presented by counsel for any party to the proceeding, the Retirement Board shall make a decision, which decision shall contain a clear and concise statement of the facts and the legal conclusions.
> "(b) Any person aggrieved by the decision of the Retirement Board shall have all rights of an aggrieved party under the applicable provisions of the Administrative Procedures Act . . . ." See Admin. R. 11 at 9-10.

> job, and you are in job share, you only have a half-time job. There's not a full-time job for your purchase to go through." Id. at 25.

Ultimately, the Board voted 9-3 to affirm the decision of the Hearing Officer. Id. at 27-28. Petitioner timely appealed pursuant to § 42-35-15.

II

Standard of Review

The Rhode Island Administrative Procedures Act (APA), chapter 35 of title 42, controls this Court's review of an administrative appeal. Under § 42-35-15,[4] this Court is granted appellate jurisdiction to review "final orders . . . of state administrative agencies not exempted from the Rhode Island Administrative Procedures Act."[5] Rocha v. State Pub. Utils. Comm'n, 694 A.2d 722, 725 (R.I. 1997).

ERSRI utilizes a two-tier review process, in which grievances are heard first by a hearing officer, who issues a written decision that is submitted to the Retirement Board.

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[4] Section 42-35-15(g) of the Rhode Island Administrative Procedures Act states:

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

[5] Section 42-35-15(a) of the Administrative Procedures Act declares, "[a]ny person . . . who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter."

Admin. R. 11 at 6, 9. The Board then considers this decision, along with any further briefs or arguments by the parties and renders its own decision. Id. at 9-10. This type of two-step procedure has been likened to a "funnel." See Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 207 (R.I. 1993). At the first level of review (i.e., the "mouth of the funnel") stands the hearing officer responsible for analyzing the totality of the evidence, opinions, and issues. Id. The Board is positioned at the "discharge end" of the funnel as the second stage of review, and does not receive the testimony considered by the hearing officer first-hand. Id. at 207-08. Hence, "the further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the factfinder." Id. at 208.

In reviewing an agency's decision, this Court may not substitute its judgment for that of the agency on questions of fact. Rocha, 694 A.2d at 725. Furthermore, when more than one conclusion can be gleaned from the evidence, the Court must affirm the agency's decision "unless the agency's findings in support of its decision are completely bereft of any competent evidentiary support." Id. at 726 (citing Sartor v. Coastal Res. Mgmt. Council, 542 A.2d 1077, 1083 (R.I. 1988)).

Conversely, "[q]uestions of law determined by the administrative agency are not binding upon [the Court] and may be freely reviewed to determine the relevant law and its applicability to the facts presented in the record." Dep't of Envtl. Mgmt. v. Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002) (citing Carmody v. R.I. Conflict of Interest Comm'n, 509 A.2d 453, 458 (R.I. 1986)). It is evident, however, that while a court of review addresses questions of statutory interpretation on a de novo basis, it is a

> "'well-recognized doctrine of administrative law that deference will be accorded to an administrative agency

> when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 97 (R.I. 2010) (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)).

Moreover, the Supreme Court of Rhode Island has long recognized that "'an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.'" Town of Richmond v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 151, 157 (R.I. 2008) (quoting Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2005)).

III

Analysis

The Petitioner presents four main arguments as to why she should be allowed to purchase full retirement benefits for the six years she participated in a job share program. First, the Petitioner contends that the General Assembly's 2011 amendment to § 16-16-5(d) does not pertain to Petitioner's request to purchase because such request was filed prior to the amendment's enactment. Additionally, Petitioner argues that the six years spent in the job share program qualified as six "leaves of absence," which would entitle her to the right to purchase credits under § 16-16-5(a). Third, Petitioner holds that the Superior Court's decision in Sullivan v. Ret. Bd. of the Employees' Ret. Sys. of R.I., C.A. No. PC-2010-0069, 2011 WL 4352173 (R.I. Super. 2011), has precedential value to Petitioner's case. Finally, Petitioner cursorily contends that the Hearing Officer misconstrued the nature of the job share program, dismissing it as mere part-time work.

A

Petitioner's Ability to Purchase Credits for Unworked Job Time

At issue in this case is a dispute over the applicable language of § 16-16-5 entitled "Service Creditable." In 2011, the General Assembly enacted a statutory amendment to § 16-16-5 that Petitioner argues is inapplicable to her circumstance. Specifically, Petitioner contends that as her request to purchase credit was filed in 2009, about two years prior to the 2011 amendment, her request should be analyzed under the language of the 2009 version of § 16-16-5 rather than the amended version.

In 2009, § 16-16-5 provided, in pertinent part:

> "(a) In calculating "service," "prior service," or "total service" as defined in § 16-16-1, every teacher shall be given credit for a year of service for each year in which he or she shall have served as a teacher; provided, that any teacher who through illness or leave of absence without pay does not serve a full school year may receive credit for a full school year of service by paying the full actuarial cost as defined in § 36-8-1(9). Credit for leaves of absence shall be limited, in the aggregate, during the total service of a teacher to a period of four (4) years; provided, however, every teacher who had been required to resign for maternity reasons may receive credit for maternity reasons [sic] by making contribution to the system upon her return to teaching the amount she would have contributed to the retirement system, with regular interest, based upon her expected compensation but for her absence due to maternity reasons.
>
> (d) Any teacher employed in at least a half (1/2) program including a job share program shall remain a contributing member and shall receive credit for that part-time service.

The current version of § 16-16-5(d), which is the particular section Petitioner contends does <u>not</u> apply to her situation, states:

> "(d) Any teacher employed in at least a half (1/2) program including a job share program, <u>or working at least half the</u>

> number of days that the public schools are required to be in session, shall remain a contributing member and shall receive credit for that part-time service on a proportional basis. The purchase of any remaining program or job share time in which the teacher did not work shall not be permitted."[6]

The Petitioner is correct that the 2011 amendment cannot be applied to her given that her retirement in 2009 predated the amendment. See Arena v. City of Providence, 919 A.2d 379, 392 (R.I. 2007) (holding that a city ordinance in effect at the time of plaintiffs' retirement governed the terms of their retirement). Therefore, this Court will apply the statutory language from 2009 in considering the denial of Petitioner's request to purchase time. However, the language of the amendment may be considered as part of this Court's analysis of the meaning of the 2009 statutory language. See Hometown Properties, Inc. v. Fleming, 680 A.2d 56, 62 (R.I. 1996) (holding that statutory amendments may serve to clarify rather than alter a statute, in which case those amendments are entitled to weight in interpreting the original statutory language).

Petitioner asserts that since the General Assembly felt compelled to enact this amended text, such an action shows intent to clarify an otherwise uncertain and ambiguous provision. Petitioner emphasizes that the Generally Assembly would not have inserted this additional language if the original text had been clear, thus supporting her argument that the 2009 language was ambiguous. For this reason, Petitioner contends that the 2009 language—specifically the language stating, "that any teacher, who through illness or leave of absence without pay does not serve a full school year may receive credit for a full school year of service by paying the full actuarial cost as defined in § 36-8-1(9)"—must be applied to her request. See § 16-16-5(a).

[6] The underlined text indicates the additions and/or revisions from the 2009 provision.

Conversely, ERSRI argues that neither the statutory language nor the legislative history of § 16-16-5 supports a conclusion that the General Assembly intended to permit a job sharing teacher to purchase the unworked portion of his or her job share. Moreover, ERSRI posits that—even disregarding the 2011 amended language—§ 16-16-5(d) still states that a job sharing teacher will remain a contributing member and receive credit for the part-time service he or she provided within that job share program. ERSRI further contends that the General Assembly's 2011 amended language explicitly stated what was already provided for in the statutory scheme, which is that credit is earned based on the work actually performed and that a job sharing teacher cannot purchase credit for the time in which he or she did not work. ERSRI explains that the statute permits awarding service credit for the portion of the job share actually worked and that the statute contains no provision suggesting that the unworked portion of the job share is either awardable or available for purchase.

'"It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" Iselin v. Retirement Bd. of Employees' Ret. System of R.I., 943 A.2d 1045, 1049 (R.I. 2008) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, when confronted with an ambiguous statute, this Court examines the statute "in its entirety, in order to 'glean the intent and purpose of the Legislature.'" State v. Peterson, 722 A.2d 259, 264 (R.I. 1998) (quoting In re Advisory to the Governor, 668 A.2d 1246, 1248 (R.I. 1996)). Hence, the Court must first analyze the language of the statute as it was in 2009 and decide whether it is wholly ambiguous. It is not.

The language of § 16-16-5(d) clearly states that a person working in a job share program would only receive service credit for their "part-time service." This provision straightforwardly outlines the service credits the people participating in this program would receive: part-time credit for part-time work.

Moreover, a review of the statute as a whole is not helpful to petitioner. Section 16-16-5(a) in pertinent part reads, "any teacher who through illness or leave of absence without pay does not serve a full school year may receive credit for a full school year of service by paying the full actuarial cost as defined in § 36-8-1(9)." This section does not include any mention of teachers that participate in a job share program. Instead, the General Assembly identified three instances when it would be appropriate for a teacher who did not work a full school year to purchase service credits: (1) illness, (2) leave of absence, and (3) resignation for maternity.

The omission of the class of teachers participating in job share from § 16-16-5(a) speaks to the Legislature's intent to prohibit this class of teachers from being able to purchase additional service credits for the unworked portions of their job share programs. See Retirement Bd. of Employees' Retirement System of State v. DiPrete, 845 A.2d 270, 287 (R.I. 2004) (recognizing the canon of construction expressio unius est exclusio alterius, which provides that "the expression of one thing is the exclusion of another"). By specifically mentioning the job share program in § 16-16-5(d)—indicating that the General Assembly was aware of the job share program—and not mentioning it in § 16-16-5(a), it is apparent that the Legislature intended that job share teachers receive credit for their part-time service but that they not be permitted to purchase credit for the time in

which they did not work. See id. The 2011 amendment to the statute confirms that intent.

It is well settled that administrative agencies are accorded great deference when interpreting the statutes they administer. See Auto Body Ass'n of R.I., 996 A.2d at 97. Moreover, administrative deference is accorded to these agencies "even when the agency's interpretation is not the only permissible interpretation that could be applied." Pawtucket Power Assocs. Ltd. Partnership, 622 A.2d at 456-57 (citing Young v. Community Nutrition Inst., 476 U.S. 974 (1986)). Notwithstanding this deference, however, the Court always remains "the final arbiter of questions of statutory construction." Rossi v. Employees' Ret. System, 895 A.2d 106, 113 (R.I. 2006). In this case, the agency's interpretation is consistent with the statutory scheme. Accordingly, the Board's decision denying Petitioner the right to purchase credit is not affected by error of law. See § 42-35-15(g).

B

Job Share Versus Leave of Absence

The Petitioner contends that the Legislature's omission of "leave of absence" from the list of terms defined in § 16-16-1 creates an ambiguity because the term "leave of absence" is not an ordinary term but rather a "term of art."[7] In support of her position, Petitioner points to the testimony of Director Karpinski, stating that "leave of absence" "may be a term of art." See Admin. R. 15 at 4. Additionally, Petitioner asserts that when ascertaining the intention of the Legislature, "it may be necessary to strike out or insert

[7] Black's Law Dictionary defines "term of art" as "[a] word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts." 1700 (10th ed. 2014).

certain words" to carry out that intention. Mason v. Bowerman Bros., Inc., 95 R.I. 425, 434, 187 A.2d 772, 777 (1963). Petitioner proposes adding the word "partial" before "leave of absence" to justify her request to purchase service credits for the unworked portion of her job share specifically because "a partial leave of absence is just as reasonable, or [sic] if not more reasonable, based on the favorable treatment that teachers receive under [§ 16-16-5]." (Admin. R. 27 at 10.) The Petitioner contends that she should be entitled to purchase half-year credits for the unworked portions of her job share years because those unworked half-years constituted approved "leave[s] of absence from the full-time teaching." See Admin. R. 27 at 14.

ERSRI argues that "leave of absence" is plain and unambiguous and that Rhode Island General Laws do not identify a "partial" leave of absence. Furthermore, ERSRI recognizes that no evidence was provided by Petitioner, either by document or her testimony at the hearing before the Hearing Officer, that suggests Petitioner was on an approved leave of absence within the meaning of § 16-16-5(a). See Admin. R. 15 at 15 (Ms. Capineri's admission that she never sought a formal leave of absence). Additionally, ERSRI asserts that Petitioner's status in the job share program did not constitute a leave of absence because Petitioner was not absent from her employment position but rather, reduced her hours and shared a single job with another teacher. ERSRI contends that it is prohibited from acting outside the powers granted to it by statute absent a clear instruction from the Legislature. ERSRI argues that it does not have the authority to permit Petitioner to purchase the service credit for the period during which she was not absent from her job but instead, worked reduced hours within her regular position.

The Rhode Island Supreme Court has consistently held that when a statute does not define a pivotal phrase, "courts will often apply a common meaning as provided by a recognized dictionary." Planned Environments Mgmt. Corp. v. Robert, 966 A.2d 117, 123 (R.I. 2009); see also Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007) (citing Pacheco v. Lachapelle, 91 R.I. 359, 362, 163 A.2d 38, 40 (1960)). Furthermore, the Rhode Island Supreme Court has succinctly stated that when interpreting a statute, "our ultimate goal is to give effect to the General Assembly's intent. We have further stated that [t]he plain statutory language is the best indicator of legislative intent. And we have indicated that a clear and unambiguous statute will be literally construed." DeMarco v. Travelers Ins. Co., 26 A.3d 585, 616 (R.I. 2011) (internal citations and quotations omitted).

However, "[t]he plain meaning approach . . . is not the equivalent of myopic literalism, and it is entirely proper for [the Court] to look to the sense and meaning fairly deducible from the context." Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I. 2011) (quoting In re Brown, 903 A.2d 147, 150 (R.I. 2006)) (internal quotations omitted). Accordingly, this Court should not consent '"to be blindly enslaved to the literal meaning of statutes when to do so would defeat or frustrate the evident intendment of the legislature."' Sugarman v. Lewis, 488 A.2d 709, 711 (R.I. 1985) (quoting Town of Scituate v. O'Rourke, 103 R.I. 499, 507, 239 A.2d 176, 181 (1968)).

The omission of the terms, "job share" and "leave of absence," from the definitions of § 16-16-1, indicates a legislative intent to have the terms defined by their ordinary meanings. Black's Law Dictionary defines "leave of absence" as "[a] worker's

temporary absence[8] from employment or duty with the intention to return." 1028 (10th ed. 2014). It is reasonable to conclude that the use of the term "leave of absence" in § 16-16-5 is plain and unambiguous and, as used in its everyday vocabulary, necessarily refers to a complete absence from employment and not merely a reduction in hours. See DeMarco, 26 A.3d at 616 (quoting State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998)) (holding that "'when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings[]'"). The Petitioner's argument that the Court should infer the word "partial" with leave of absence is also without merit because our Supreme Court has made clear that insertions or deletions to statutory language should only be made by the Court when such alteration is clearly necessary to remedy some "correction of careless language" or otherwise meet "the true intention of the Legislature." See Mason, 95 R.I. at 433-34, 187 A.2d at 777. The Petitioner has presented no evidence that the General Assembly clearly intended for "leave of absence" to include a partial leave of absence.

Furthermore, it is well settled that when an agency interprets a statute whose administration and enforcement has been entrusted to it, substantial weight will be given to the agency's interpretation even if that interpretation is not the only permissible interpretation that could be applied. Auto Body Ass'n of R.I., 996 A.2d at 97. Unless the agency's findings in support of its decision are "completely bereft of any competent evidentiary support," the Court will generally not substitute its judgment for that of the agency. Rocha, 694 A.2d at 726.

[8] The term "absence" is defined as "[t]he quality, state, or condition of being away from one's usual place of residence." Black's Law Dictionary 8 (10th ed. 2014).

Based on the administrative record in its entirety, this Court finds sufficient legally competent evidence authorizing ERSRI's interpretation of § 16-16-5 that a job share does not constitute a "leave of absence" and therefore, teachers engaged in a job share are ineligible to purchase service credit for the half-years that they do not actually work. The Petitioner's own testimony indicates that a job share teacher stays connected to the school, students, and the teaching process. See Admin. R. 15 at 8-9 (testimony by Petitioner that job share teachers work every day; actually work more than half-time because of overlap in the schedules; and "stay[] in touch with education, stay[] in touch with new concepts coming down the pike . . . ").

These admitted connections to the teaching profession and the classroom conflict with the very definition of a leave of absence, requiring "being away from" one's place of employment. See Black's Law Dictionary 8 (10th ed. 2014). Although ERSRI's interpretation of § 16-16-5 is not the only interpretation that can exist, there is enough competent evidentiary support found within the administrative record to sustain ERSRI's interpretation and its reasonable reliance on that interpretation to deny Petitioner's claim. See Auto Body Ass'n of R.I., 996 A.2d at 97 (quoting Pawtucket Power Assocs. Ltd. Partnership, 622 A.2d at 456-57). Accordingly, ERSRI's denial of Petitioner's request to purchase credit is not a violation of § 16-16-5(a), the provision relating to leave of absences.

C

The Sullivan Decision

In her memorandum to this Court, Petitioner relies on the Superior Court decision in Sullivan, 2011 WL 4352173 (Super. Ct. 2011) in support of her request to purchase

service credits. In Sullivan, a full-time teacher with the Newport School Department was laid off for financial reasons but was then provided with an option to return to work part-time, which he accepted. Id. at 2. When the petitioner in that case sought to purchase service credits for the years that he worked part-time under this arrangement, ERSRI denied his request because he had not been on a leave of absence from employment. Id. at 2. The Superior Court found that an interpretation—that would allow a teacher who was laid off and collected unemployment payments to purchase service credits but deny that same purchase option to a teacher who had agreed to work part-time after being laid off—"leads to an absurd result and thwarts the spirit of the law." Id. at 12. Therefore, the Court found that, although the petitioner's employment had continued uninterrupted and he had continued his contributions to the pension fund, ERSRI's denial of his request to purchase service credits was clearly erroneous. Id. at 12.

The Petitioner argues that since in Sullivan this Court found that "the Board's decision achieves an absurd result by denying [petitioner] an opportunity to purchase credits that would have been available to him had he declined the part-time job offer," the same result should be found here. Id. at 2. Furthermore, Petitioner compares her situation to that of the petitioner in Sullivan in that both were active, participating members in the Retirement System during the years in which they received part-time pay and part-time service credit. In Sullivan, the Superior Court reasoned that:

> "The idea—that one member could refuse an offer of part-time employment, perhaps even qualify to collect unemployment compensation in the interim, and then later be qualified to purchase retirement credits, while another member could be precluded from purchasing retirement credits because he/she chose to accept an offer of part-time employment—leads to an absurd result and thwarts the spirit of the law." Id. at 12.

The Petitioner argues that there is no reason why she should be precluded from purchasing service credits for the unworked portion of her job share when the petitioner in Sullivan was permitted to purchase service credits for the time in which he was working part-time and laid-off part time. For the Court to deny Petitioner's request to purchase the service credits, Petitioner maintains, would similarly constitute the absurd result mentioned in Sullivan.

In response, ERSRI contends that Sullivan is wholly inapposite to the case at bar. First, ERSRI argues that Sullivan involves an entirely different statute—specifically § 36-9-26—because the Petitioner in that case sought to purchase service credit for time during which an employee was laid off rather than participating in a voluntary job share program. Thus, ERSRI contends Sullivan is irrelevant to this matter. Moreover, ERSRI explains the petitioner in Sullivan was laid off due to budgetary constraints and was later presented the option to return to work part-time during the layoff period on the grounds that he would be rehired following the layoff. The Superior Court, Vogel, J., reversed the decision of ERSRI, which denied the petitioner the right to purchase service credits for the period in which he worked a reduced schedule during the layoff. Due to the fact that there are two different statutes at play in comparing Sullivan to the instant case, ERSRI contends that Petitioner's reliance on Sullivan is misplaced.

Our Supreme Court has stated that the term "lay off" generally means "a 'period of temporary dismissal' with anticipation of recall." Formisano v. Blue Cross of R.I., 478 A.2d 167, 169 (R.I. 1984) (quoting CBS Inc. v. Int'l Photographers of the Motion Picture Industries, Local 644, I.A.T.S.E., 603 F.2d 1061, 1063 (2d Cir. 1979)). As discussed above, a "leave of absence" is also a temporary absence from employment with

the intent to return. However, a "leave of absence" is a voluntary action by the employee himself or herself while a lay-off is activated by the employer for diverse budgetary reasons. Although Sullivan involved the underlying issue of purchasing service credits, it is distinguishable from the case at bar in that the petitioner sought to purchase service credits under a different statutory scheme than Petitioner here. Furthermore, Sullivan is a Superior Court decision and thus lacks precedential value regarding the Petitioner's case. See D'Arezzo v. D'Arezzo, 107 R.I. 422, 426-27, 267 A.2d 683, 685 (1970) (holding that it is the Supreme Court which declares the law and must be followed by inferior courts). Thus, Petitioner's reliance on Sullivan is misplaced.

Accordingly, this Court finds that ERSRI's denial of Petitioner's request to purchase service credits was not clearly erroneous or affected by error of law. See § 42-35-15.

D

Part-Time Work

The Petitioner's final contention is that the Board and the Hearing Officer misconstrued the nature of a job share and considered it little more than a "mere reduction in hours." As Ms. Capineri puts forth in her memorandum, "[j]ob sharing is so much more." She states that job sharing is a full-time commitment because extensive time is spent collaborating with the other teacher as well as jointly attending professional days and parent conferences. Therefore, Petitioner disputes the Hearing Officer's description of a job share as just working reduced hours. The Petitioner specifically asserts that such a classification is "misleading, unjust, inaccurate and demeaning."

The record evidences that this final contention concerns Petitioner's offense at what she perceived as condescension from the Hearing Officer. The Petitioner here essentially contends that the Hearing Officer misconstrued the job share program as part-time work.

The record demonstrates that the Hearing Officer did refer to Ms. Capineri's job share as a "part-time arrangement" and observed that she "duly received fractional credit for fractional work." (Admin. R. 18 at 31.) Although Ms. Capineri views these comments as "demeaning," the Hearing Officer's general description of the job share program indicates that he fully understood the nature of the program. The Hearing Officer described the job share as a voluntary arrangement, not motivated by budgetary or other administrative decisions, where Petitioner worked every school day for approximately three and one-half hours per day and received six months of service credit for each year that she worked this half-time position. (Admin. R. at 10, 30-31.) The record shows that the Hearing Officer comprehended the nature of the job share program and Petitioner's responsibilities under that program.

The crux of the Hearing Officer's findings in regard to the time commitment is that Petitioner is entitled to only one-half year's credit because she worked one-half of a full year position, with another teacher working the other half. (Admin. R. 18 at 7, 30-31.) As ERSRI points out, a job share position involves two persons sharing one full-time equivalent position. (Admin. R. 15 at 33-34.) Ms. Capineri herself admitted upon cross-examination that the position that had previously constituted her full-time employment was filled by two teachers during her job share years. (Admin. R. 15 at 11-12.) Therefore, the Hearing Officer's conclusion that Ms. Capineri's position was

effectively part-time because two persons shared a single position was reasonable and supported by legally competent evidence in the record. See Rocha, 694 A.2d at 726. Consequently, the Hearing Officer's decision in regards to the credit available to Ms. Capineri for that part-time work is consistent with this Court's analysis of § 16-16-5[9] and was neither clearly erroneous nor affected by any other error of law. See § 42-35-15; Rocha, 694 A.2d at 726.

IV

Conclusion

The Petitioner's participation in the job share program is governed by § 16-16-5(d), which plainly states that teachers who participate in job share programs receive service credit towards retirement for the part-time portion of the job share during which they actually worked. The Petitioner's time job sharing did not constitute a leave of absence because Petitioner never left her position of employment but rather, voluntarily chose to split the responsibilities and time of her work with another teacher. Also, Petitioner has not presented this Court with any statutory language or case law recognizing a "partial leave of absence."

The administrative record before this Court reflects legally competent evidence supporting the decisions of the Hearing Officer and the Board. After review of the entire record, this Court finds the decisions of the Hearing Officer and the Board were not in violation of any statutory provisions, not affected by error of law, and not clearly erroneous. Substantial rights of the Petitioner have not been prejudiced. Accordingly,

[9] See supra, section III(A).

the decision of the Retirement Board of the Employees' Retirement System of Rhode Island is affirmed. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Ann Capineri v. Employees' Retirement System of Rhode Island Board
CASE NO:	PC 12-3836
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 20, 2015
JUSTICE/MAGISTRATE:	Matos, J.
ATTORNEYS:	
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For Defendant:	Michael P. Robinson, Esq.; John H. McCann, Esq.