STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 25, 2017]

NATIONAL GRID	:	
	:	
V.	:	**C.A. No. PC-2012-2673**
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RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, LABOR STANDARDS DIVISION, through its Director, CHARLES J. FOGARTY; MARK ZITO (Members of Utility Workers Union of America, Locals 310 and 310B)	:	

DECISION

MATOS, J. The present matter is before this Court on National Grid's (National Grid) appeal from an administrative decision (the Decision) of the Department of Labor and Training (the DLT). The DLT required National Grid to pay its employees the difference between what they were paid on Sundays and holidays and the statutory premium pay, plus a 25% penalty of the amount due to each employee. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth in this decision, this Court affirms the Decision of the DLT.

I

Facts and Travel

The facts of this case are undisputed. The Utility Workers Union of America, Local 310 and Local 310B Brotherhood of Utility Workers Council, AFL-CIO (Local 310 and Local 310B or, collectively, the Union) are bargaining agents for National Grid

employees in Rhode Island. (Stipulation of Facts ¶ 1, App. Ex. B.) The employees are hourly and non-supervisory, and they are not exempt from the definition of "employee" in G.L. 1956 § 25-3-1(3).[1] Id. at ¶ 2. National Grid is a public utility that provides customers with electricity and natural gas. Id. at ¶ 7. As a public utility that operates in the state, National Grid is subject to Rhode Island laws and regulations. Id. at ¶ 3. National Grid is also subject to federal law and is regulated by the Rhode Island Public Utilities Commission (PUC). Id. at ¶¶ 5, 6.

Although National Grid provides service to its customers 24 hours a day, it ceases regular business operations on Sundays and all Rhode Island holidays, except Columbus

[1] Section 25-3-1(3) provides: "'Employee' means any individual employed by an employer, but shall not include:

> "(i) Any individual employed in agriculture or maritime trades, including commercial fishing or boat repairs;
> "(ii) Any physician, dentist, attorney at law, or accountant;
> "(iii) Any individual engaged in the provision of health care or maintenance;
> "(iv) Any individual employed in a restaurant, hotel, motel, summer camp, resort, or other recreational facility (except health clubs);
> "(v) Any individual employed in the business of offshore petroleum or gas exploration or extraction, or in the business of servicing or supplying persons engaged in exploration or extraction;
> "(vi) Supervisory employees as defined in 29 U.S.C. § 213(a)(1) and regulations issued pursuant to that section;
> "(vii) Any individual employed by an employer holding a license issued pursuant to chapter 23 of title 5; or
> "(viii) Any individual employed as part of a telephonic delivery of customer service, sales operations, and ancillary services related to those services and operations, except for specific employment positions in the telecommunications industry that are part of any collective bargaining agreement or employment contract in effect on July 2, 1998." Sec. 25-3-1(3).

Day. Id. at ¶ 11. On Sundays and holidays, a few National Grid employees work in the event that customers need assistance. Id.

Pursuant to § 25-3-1(5), Rhode Island holidays are as follows: New Year's Day; Memorial Day; July 4th; Victory Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving; and Christmas. Id. at ¶ 10. On those holidays, Rhode Island law provides that employers must pay employees who work one and one-half times their normal pay rate. Id.

National Grid has a valid Collective Bargaining Agreement (CBA) with both Local 310 and Local 310B. Id. at ¶ 12. Under the Local 310 CBA, employees regularly scheduled for a Sunday are paid twenty-five (25%) percent of their base hourly rate for each hour they work, in addition to their base pay. Id. at ¶ 13. Local 310 employees that work overtime on Sundays are paid double time for each hour they work. Id. at ¶ 14. Under the Local 310B CBA, employees regularly scheduled for a Sunday are paid thirty (30%) percent of their base hourly rate for each hour they work, in addition to their base pay. Id. at ¶ 15. Local 310B employees that work overtime on Sundays are paid one and one-half times for each hour they work. Id. at ¶ 16.

Under the CBAs' provisions, members of both Local 310 and Local 310B who are regularly scheduled to work on state holidays—with the exception of Columbus Day—are paid at least one and one-half times their hourly rate for each hour worked on that holiday. Id. at ¶ 17. Under both the Local 310 CBA and the Local 310B CBA, employees regularly scheduled for a state holiday are paid one and one-half times their base hourly rate for all hours they work. Id. at ¶¶ 18, 19. Members of both unions that

work overtime on a holiday are paid two and one-half times their hourly rate for each hour they work. Id.

Before May 12, 2003, National Grid treated Columbus Day like other state holidays, and employees working that day received the holiday pay rate. Id. at ¶¶ 20, 21. However, since then, the CBAs of both unions have recognized Columbus Day as a floating holiday, and National Grid treats the holiday as a typical business day. Id. at ¶ 22. Both parties agree "that with the exception of Columbus Day, all employees from both locals, who are scheduled to work on the state holiday are paid at least one and one-half (1 ½) times their normal wages for hours worked on those days." (Decision 3, App. Ex A.)

In 1998, the Rhode Island Work Permits on Holidays and Sundays Statute was amended. (Stipulation of Facts ¶ 25, App. Ex. B.) Prior to 1998, the law forbid employers to require employees to work on Sundays and holidays, unless it was absolutely necessary or the employer had a permit from the DLT for cases of economic necessity. Id.; see P.L. 1976, ch. 110, § 25-3-2.[2] As a result of the 1998 amendments,

[2] Public Laws 1976, ch. 110, § 25-3-2 provides:

> "It shall be unlawful for any employer to require or permit an employee to work on Sundays or holidays except for work of absolute necessity or work performed pursuant to a permit issued under the provisions of section 25-3-3, provided that, nothing herein contained shall prohibit any licensing board of any city or town of the state or any state licensing board or commission from granting a permit to hold athletic meets, contests, race meets, or athletic exhibitions or any of the foresaid Sundays or holidays, and any person, association or corporation receiving a permit to operate any such event shall have the right to employ the necessary persons to conduct such event, and nothing herein contained shall prohibit any person from engaging in or being employed in connection with the holding or

the statute no longer requires that the work be absolutely necessary, nor does it require employers to secure a work permit. (Stipulation of Facts ¶ 26, App. Ex. B); see R.I. Pub. Laws 1998, ch. 73. Consequently, § 25-3-3 (the Sunday and Holiday Pay Statute) requires that employees be paid time and one-half for work on Sundays and holidays, with limited exceptions. (Stipulation of Facts ¶ 28, App. Ex. B); § 25-3-3.

The Sunday and Holiday Pay Statute also continued to provide that the DLT Director would have the power to promulgate regulations in conjunction with the statute,[3] and to allow the DLT Director to exempt any employer from the statute because of its operations or size, by the adoption of such regulations. (Stipulation of Facts ¶¶ 29, 30, App. Ex. B); see §§ 25-3-6, 25-3-7. Some of the pre-amendment regulations promulgated by the DLT remained on file even after the amendments to the Sunday and Holiday Pay Statute were passed. (Stipulation of Facts ¶ 35, App. Ex. B.) One such regulation—promulgated before the 1998 amendments—included public utility companies as one of the employers considered "absolutely necessary" for purposes of the statute. Id. at ¶¶ 31, 35.

These pre-amendment regulations were addressed in two post-amendment advisory letters, and National Grid relied on those letters in failing to pay the statutory premium to all its employees.[4] In the advisory letters, the DLT found that National Grid

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operation of any such event so licensed." P.L. 1976, ch. 110, § 25-3-2.

[3] "The director may promulgate any regulations as shall be necessary for the full and proper implementation of this chapter." Sec. 25-3-6.

[4] Advisory letters do not constitute binding law. See In re Advisory from the Governor, 633 A.2d 664, 677 (R.I. 1993).

was exempt from the coverage of the Sunday and Holiday Pay Statute.[5] Id. at ¶¶ 37, 38.

On November 11, 2009, Mark Zito, on behalf of members of Local 310 and Local 310B, filed a complaint with the DLT's Division of Labor Standards alleging National Grid's failure to pay the premium hourly rate provided in the Sunday and Holiday Pay Statute. (Decision 1, App. Ex. A.) In accordance with Rhode Island law, the DLT Director's designee (Hearing Officer) conducted a hearing on August 16, 2010. Id.; see § 28-14-19.[6] The parties did not present any testimony or evidence at the hearing, and instead submitted a Stipulation of Facts, along with exhibits, to the DLT on January 24, 2012.[7] Id.

On April 25, 2012, the DLT entered its Decision, finding that the advisory letters were not binding, and, as such, employees were to be paid at least one and one-half times their hourly rate for Sunday and holiday work. Id. at 5, 7. As a result, the DLT ordered that, for employees that had received less than the statutory premium on Sundays, National Grid should pay "the difference less the standard deductions." Id. The DLT also ordered that National Grid pay "a 25% penalty of the amount determined to be due each employee." Id.

National Grid appealed the Decision to this Court, arguing that the Decision should be reversed and vacated as the state law claim was preempted under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185(a) (Section 301).

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[5] The advisory letters were issued on September 9, 2005 and April 30, 2007 by Margaret Riley, the then-Chief Labor Standards Examiner for the DLT. (Stipulation of Facts ¶¶ 37, 38, App. Ex. B.)

[6] Section 28-14-19 provides: "With respect to all complaints deemed just and valid, the director or his or her designee shall order a hearing thereon at a time and place to be specified, and shall give notice thereof . . . ." Sec. 28-14-19(c).

[7] This Court has relied on the parties' Stipulation of Facts for its rendition of the facts of this case.

Additionally, National Grid argues that the DLT abused its discretion in ordering National Grid to pay a 25% penalty. The Union asks this Court to affirm the Decision, arguing that the Decision articulated the relevant law and there is no manifest error. National Grid has waived its right to raise a Section 301 preemption defense because it raises the issue for the first time on appeal.

II

Standard of Review

Under the Rhode Island Administrative Procedures Act, the Superior Court has appellate jurisdiction to review final orders of state administrative agencies. Sec. 42-35-15. Upon review of an administrative agency appeal, the Superior Court "'reviews the record to determine whether legally competent evidence exists to support the findings.'" Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 437 (R.I. 2010) (quoting Sartor v. Coastal Res. Mgmt. Council, 542 A.2d 1077, 1083 (R.I. 1988)). The Superior Court may "not . . . substitute its judgment on questions of fact for that of the agency whose actions are under review." Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992). That is, where "'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of Rhode Island v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecommunications Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

The Superior Court may reverse or modify an agency decision in limited circumstances, pursuant to § 42-35-15, 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." Sec. 42-35-15(g).

Further, the Act restricts the Superior Court's review of administrative decisions to questions of law. Reilly Elec. Contractors, Inc. v. State Dep't of Labor & Training ex rel. Orefice, 46 A.3d 840, 844 (R.I. 2012). "The factual findings of the administrative agency are entitled to great deference." Champlin's Realty Assocs., 989 A.2d at 437. Consequently, the Superior Court decides "whether the agency's decision is supported by any legally competent evidence in the record." R.I. Pub. Telecommunications Auth., 650 A.2d 479, 484–85 (R.I. 1994). "'Legally competent evidence'" has been defined as "'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.'" Reilly Elec. Contractors, Inc., 46 A.3d at 844 (quoting Foster-Glocester Regional Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004)) (internal quotation marks and citation omitted). However, the Superior Court may vacate an agency decision if it is "'clearly erroneous in view of the reliable, probative, and substantial evidence contained

in the whole record.'" Id. (quoting Auto Body Ass'n, 996 A.2d at 95) (internal quotation marks and citation omitted).

III

Analysis

A

Preemption

National Grid argues that the DLT should have dismissed the Union's state law claim pursuant to the doctrine of complete preemption under Section 301 of the LMRA. National Grid raises this argument for the first time in this appeal. It was not raised or addressed before the DLT. The Union argues that preemption is an affirmative defense that National Grid waived as it is based on choice of law, not subject matter jurisdiction. Specifically, the Union contends that National Grid seeks application of the CBA instead of state law, which only implicates choice of law rather than choice of forum.

Generally, parties "may not have judicial review of an issue that they might have but did not present to the agency at the appropriate time."[8] 3 Charles H. Koch, Jr.,

[8] Our Supreme Court has not expressly determined that the raise-or-waive rule applies to administrative proceedings, but it has found other judicial doctrines apply, including res judicata, collateral estoppel, and stare decisis. Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 808 (R.I. 2000); see Danzer v. R.I. Bd. of Med. Licensure & Discipline, 745 A.2d 733, 735 (R.I. 2000). Other jurisdictions apply the raise-or-waive rule to administrative hearings. See, e.g., Mazariegos-Paiz v. Holder, 734 F.3d 57, 62 (1st Cir. 2013) ("Were the court free to delve into the merits of issues not presented to the agency, it would effectively usurp the agency's function."); see also 2 Richard J. Pierce, Jr., Administrative Law Treatise § 15.8 (5th ed. 2010) ("'A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented . . . .'") (quoting Unemployment Comp. Comm'n of Territory of Alaska v. Aragan, 329 U.S. 143, 155 (1946)) (collecting cases). In fact, our Supreme Court applies the raise-or-waive rule to encourage issue exhaustion in the trial court, and this reasoning is similar to that of other jurisdictions which have applied the rule to administrative proceedings. See State v. Burke, 522 A.2d 725, 731 (R.I. 1987).

Administrative Law and Prac. § 12.21 (3d ed. 2010). However, challenges "to subject-matter jurisdiction 'may not be waived by any party and may be raised at any time in the proceedings.'" Fed. Nat'l Mortgage Ass'n v. Malinou, 101 A.3d 860, 866 (R.I. 2014) (quoting Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012)). As such, the appropriate initial inquiry is whether preemption is considered jurisdictional.

Section 301 of the LMRA provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

The United States Supreme Court decided that "[S]ection 301 required the federal courts to create a body of federal common law for CBAs affecting interstate commerce." Cavallaro v. UMass Mem'l Healthcare, Inc., 678 F.3d 1, 5 (1st Cir. 2012) (citing Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456-57 (1957)). Additionally, the Supreme Court has found that the effect of Section 301 is that a state claim becomes "a federal contract claim allowing removal as one within the federal 'arising under' jurisdiction." Id. (citing 28 U.S.C. § 1441(b)).

The First Circuit has noted that the defense of preemption under Section 301 "is not jurisdictional because the state courts maintain concurrent jurisdiction over claims under the Act." Fryer v. A.S.A.P. Fire & Safety Corp., 658 F.3d 85, 90 (1st Cir. 2011) (citing Sweeney v. Westvaco Co., 926 F.2d 29, 39 (1st Cir.1991)). The court in Fryer explained that "[b]ecause a successful preemption defense under the LMRA would dictate a change in the choice of law, but not a change in forum, the preemption defense

is not jurisdictional and can be waived." Id.; see also Wolf v. Reliance Standard Life Ins. Co., 71 F.3d 444, 449 (1st Cir. 1995) (holding that under the Employee Retirement Income Security Act[9] (ERISA), preemption was waivable as it was not jurisdictional because it concerned choice of law, rather than of forum).

Other circuit courts have also examined the issue of waiver in the context of Section 301 preemption defenses. See, e.g., Johnson v. Armored Transp. of California, Inc., 813 F.2d 1041, 1044 (9th Cir. 1987) (holding that the failure to adequately raise the Section 301 preemption defense was waived because a valid defense would only result in treating the action as a federal law claim as opposed to a state law claim, and it would not require the action to be brought in a different forum). In Sweeney, the court held that the defendant employer's Section 301 preemption defense was not jurisdictional. 926 F.2d at 38-40. There, the plaintiff sued her husband's employer for loss of consortium arising from negligence that led to her husband's nervous breakdown. Id. at 32-33. Because the preemption defense was not jurisdictional and the defendant raised it for the first time after the jury reached a verdict, the court decided that it would only consider the preemption defense if the defendant demonstrated adequate reasons for its failure to timely raise the argument. Id. at 40-41. The court noted that competing interests that support applying preemption to a case include "the risk that terms in the [CBA] will take on different meanings under state and federal law" if preemption is not applied. Id. at 41. However, the court reasoned that the case did not require interpretation of the CBA and no third parties were identified who may have been "adversely affected by any [CBA]

[9] The Supreme Court has indicated that ERISA preemption should be treated like LMRA preemption. Wolf v. Reliance Standard Life Ins. Co., 71 F.3d 444, 449 (1st Cir. 1995) (citing Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 51-56 (1987)).

interpretation . . . at issue." Id.; but see Nat'l Metalcrafters, Div. of Keystone Consol. Indus. v. McNeil, 784 F.2d 817, 820, 826 (7th Cir. 1986) (finding that the failure to raise the preemption issue did not warrant waiver given that the plaintiff had raised the issue in district court regarding preemption of federal labor law, generally, and the fact that the issue did not require any factual determinations); see also Apponi v. Sunshine Biscuits, Inc., 809 F.2d 1210, 1213, 1215 (6th Cir. 1987). Likewise, this Court will only reach the merits of National Grid's preemption argument if this case presents "unusual" circumstances—such as the possibility that CBA terms could be interpreted differently under state and federal law—such that a party's waiver is not dispositive. See Sweeney, 926 F.2d at 41.

The Union argues that National Grid had a number of chances to raise the preemption argument, but failed to do so. Initially, the Union contends, National Grid agreed with the Hearing Officer's opinion that this case dealt with a question of law, and submitted to the hearing process based on the parties' briefs, without a formal hearing.[10] See Decision 1-2, Apr. 25, 2012. National Grid failed to raise the preemption issue in the six months between the time the parties met with the Hearing Officer and the date National Grid submitted its brief. Additionally, National Grid did not raise the issue in its Motion for the Department to Reconsider the Decision, dated May 15, 2012. See RIDLT's Denial of Request for Reconsideration.

[10] The Local 310 CBA provides in Article XVI, Settlement of Disputes, Section 4: "All grievances not settled under the procedure outlined above and other differences arising between the parties relative to wages, hours, conditions of employment or other matters mentioned in this agreement *shall at the request of either party, be referred to arbitration* to an arbitrator mutually agreed upon by the parties, whose decision shall be final and binding." See Local 310 CBA, Nat'l Grid Ex. C, at 52.

The facts in the instant case are similar to those in Sweeney with respect to National Grid's failure to raise the preemption issue or provide a reason for its late raising of the issue. Just as in Sweeney, where the court considered the preemption issue waived because the defendant provided no good reason for raising the issue so late, here, too, National Grid has provided this Court with no reason for raising the issue of preemption for the first time on this appeal. See 926 F.2d at 41. In fact, National Grid does not even address the issue of waiver in its brief before this Court.

As discussed supra, a factor that may support applying the preemption defense irrespective of a party's waiver is whether a case presents potential conflicting interpretations of the CBA under state and federal law. Sweeney, 926 F.2d at 41. Although not addressed in the context of a waiver argument, National Grid contends that the word "normal" as applied to "normal wages" must be interpreted under the CBA to determine whether the premium National Grid already pays its employees on non-scheduled Sundays and holidays is considered part of the employees' "normal wages."[11] In response, the Union argues that National Grid does know what "normal" means, and, in fact, the word is used in the CBA in the section regarding vacation pay, which sheds light on the word used in another wage context.[12]

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[11] National Grid also notes that the Union appealed the Decision, seeking to vacate it on the basis that the employees should not only receive what the Hearing Officer awarded—the difference between the statutory rate of pay and what they were actually paid for Sundays and Columbus Day—but they should receive one and one-half times their normal pay *in addition to* any bargained-for premiums. However, in its Reply Brief, the Union appears to abandon that position and focuses its argument on upholding the Decision.

[12] The Local 310 CBA provides in Article XI, Vacations, Section 9: "An employee will be paid during vacation the *normal* wages or salary that he would have received if he had worked including premiums regularly accruing . . . ." See Local 310 CBA, Nat'l Grid Ex. C, at 36 (emphasis added).

A determination of employees' "normal" wages for purposes of deciding what is owed under the Sunday and Holiday Pay Statute would not result in conflicting interpretations of the CBA under state and federal law. In fact, as the Union contends, the word "normal" is used at various points in the CBAs as related to a "base" wage for an employee. See Local 310 CBA, Nat'l Grid Ex. C, at 18, 36, 49; see also Local 310B CBA, Nat'l Grid Ex. D, at 15, 32. In the Local 310 CBA, "normal" is used to indicate a "base" wage in reference to the following: (1) Vacations—"An employee will be paid during vacation the *normal* wages or salary that he would have received if he had worked including premiums regularly accruing . . . ."; (2) Rest Periods—"DOT reset rest time will be at the *normal* straight time rate of pay."; (3) Leaves of Absence—"Full *normal* wages or salary will be paid to eligible employees while absent from work for jury duty." See Local 310 CBA, Nat'l Grid Ex. C, at 18, 19, 36, 49 (emphasis added). Similarly, in the Local 310B CBA, the word "normal" is used with reference to a base rate of pay regarding vacations and jury duty, among other situations. See Local 310B CBA, Nat'l Grid Ex. D, at 15, 32.

Thus, applying the Sunday and Holiday Pay Statute as the Hearing Officer did to determine whether Union employees received the statutory minimum would not necessarily require an interpretation of the CBA, but would simply warrant a reference to the CBA for individuals' base rate of pay to see if they were paid the one and one-half the normal rate, pursuant to § 25-3-3. Contra Reyes v. S.J. Servs., Inc., Civil Action No. 12-11715-DPW, 2014 WL 5485943, at *9 (D. Mass. Sept. 22, 2014) (holding that preemption applied where CBA interpretation was necessary to assess a duty under the CBA because plaintiffs were not simply seeking "a remedy for a violation of a minimum

obligation imposed by state law").[13] Consequently, the risk that this case will result in conflicting interpretations of CBA terms under state and federal law is unlikely. See Local 174, Teamsters of Am. v. Lucas Flour Co., 369 U.S. 95, 104 (1962).

However, unlike Sweeney, where the court concluded that the plaintiff would be disadvantaged if the court did not waive defendant's preemption arguments—as the plaintiff may have argued her loss of consortium case differently to avoid CBA interpretation—here, the Union likely would not have argued its case any differently with respect to the interpretation of the CBA because the claim arises from payment of wages, negotiated and provided under the CBA. See 926 F.2d at 41. Nonetheless, on balance, this Court finds National Grid has waived its right to raise a preemption defense.

National Grid agreed that this dispute could be resolved on the briefs before the DLT. It had full opportunity to raise the preemption issue before the DLT but failed to do so. Instead, National Grid only raised the issue upon appeal, before this Court, without acknowledging or addressing its failure to raise the issue below. Waiver is justified under these circumstances and given the fact that this case will likely not result in conflicting interpretations of the CBA terms under state and federal law. See id. at 40-41.

[13] National Grid cites Reyes for the proposition that since the Union is seeking to enforce obligations under the CBAs, and not minimum obligations owed under state law, preemption applies because CBA interpretation is required. That is, National Grid opines that because it pays its employees more than minimum wage, application of the Sunday and Holiday Pay Statute automatically requires some interpretation of the CBA to assess what a "normal" base rate is for an employee who is paid more than the state minimum wage. In Reyes, the plaintiffs sought wages owed under provisions bargained for in the CBA, not owed under any statutory duty. See Civil Action No. 12-11715-DPW, 2014 WL 5485943, at *9. The instant case is different because the employees argued they have not been paid the statutory requirement for Sundays and holidays under § 25-3-3.

B

DLT Decision

The Union also argues that the Decision was not affected by error of law as the language of § 25-3-3 and the rules and regulations promulgated under § 25-3-3 are clear and unambiguous. This Court reviews questions of statutory interpretation de novo. Iselin v. Ret. Bd. of Employees' Ret. Sys. of Rhode Island, 943 A.2d 1045, 1049 (R.I. 2008). "'[W]hen 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.'" Id. (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)).

Section 25-3-3 provides as follows:

> "(a) Work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 ½) times the normal rate of pay for the work performed; provided: (1) that it is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter; (2) any manufacturer which operates for seven (7) continuous days per week is exempt from the requirement of subdivision (1)." Sec. 25-3-3(a).

Section 25-3-1(3) defines "employee" as "any individual employed by an employer, and excepts individuals working for certain industries, but does not except utility companies, such as National Grid. Sec. 25-3-1(3)(i)-(viii). As such, workers at National Grid are considered employees for purposes of § 25-3-3. See id. Consequently, National Grid workers "must be paid for at least one and one-half (1 ½) times the normal rate of pay for the work performed" on Sundays and holidays. Sec. 25-3-3(a). Thus, National Grid's

failure to pay its workers the holiday premium on Columbus Day and regularly-scheduled Sundays is in violation of Rhode Island law. See id.

The Decision rejected National Grid's arguments that the DLT's regulations exempted National Grid from the Sunday and Holiday Pay Statute. Although the post-1998 amendments to the Sunday and Holiday Pay Statute no longer require that work on Sundays and holidays be absolutely necessary, nor do they require employers to secure a work permit, the DLT still has a regulation on file that lists public utility companies as "absolutely necessary" employers. See Stipulation of Facts ¶¶ 26, 31, 35; R.I. Pub. Law 1998, ch. 73. However, "the parties to a CBA have no legal authority to contravene state law by word or deed," and so "statutory obligations cannot be bargained away via contrary provisions in a CBA, nor can they be compromised by the past or present practices of the parties." State v. R.I. Alliance of Soc. Servs. Employees, Local 580, SEIU, 747 A.2d 465, 469 (R.I. 2000). Thus, the post-1998 amendments and current version of the Sunday and Holiday Pay Statute are binding on National Grid despite the DLT regulations that may remain on file. See id.

Therefore, the Decision was not otherwise affected by error of law as the language of § 25-3-3 and the rules and regulations promulgated under § 25-3-3 are clear and unambiguous and provide that National Grid workers are entitled to holiday and Sunday premiums.

C

Penalty Provisions of § 28-14-19

National Grid also argues that the DLT abused its discretion in imposing a penalty for 25 percent of the total wages National Grid will owe its employees as a result of the

Decision. First, National Grid argues that the penalty was an abuse of discretion because National Grid was not intentionally violating Rhode Island law by failing to pay Sunday and holiday premiums as the company earnestly believed they had an exemption from the DLT. Second, National Grid argues that the penalty was an abuse of discretion because the DLT did not actually find a violation by National Grid, pursuant to § 25-3-6.

The Union argues that the DLT's imposition of the penalty was not an abuse of discretion. Further, the Union contends that although National Grid seeks to pay the lesser penalties pursuant to § 25-3-8, those penalties are only appropriate when an employer is convicted of violating the provisions of § 25-3-2; here, the Union maintains that the action against National Grid was administrative in nature and not a criminal prosecution brought by the DLT or the Attorney General. Thus, a penalty pursuant to § 28-14-19 is appropriate.

This Court reviews questions of statutory interpretation de novo. Iselin, 943 A.2d at 1049. Statutes that are "in pari materia may be construed together 'such that they will harmonize with each other and be consistent with their general objective scope.'" Shelter Harbor Fire Dist. v. Vacca, 835 A.2d 446, 449 (R.I. 2003) (quoting Local 400, IFOTPE v. R.I. State Labor Relations Bd., 747 A.2d 1002, 1004 (R.I. 2000)). Furthermore, "'repeals by implication are not favored and courts should attempt to construe two statutes that are in apparent conflict so that, if at all reasonably possible, both statutes may stand and be operative.'" Id. (quoting Providence Electric Co. v. Donatelli Building Co., 116 R.I. 340, 344, 356 A.2d 483, 486 (1976)). Additionally, one principle of "statutory interpretation posits that the Legislature is 'presumed to know the state of

existing law when it enacts or amends a statute.'" Id. (quoting Simeone v. Charron, 762 A.2d 442, 446 (R.I. 2000)).

Section 25-3-8 provides that "[a]ny employer convicted of violating the provisions of § 25-3-2 shall be punished by a fine of twenty-five dollars ($25.00) for each employee involved and each separate offense committed, but in no event shall the fine be less than two hundred dollars ($200)." Sec. 25-3-8. At the time of the Decision on April 25, 2012, § 28-14-19(b) provided that "[t]he employer shall also pay the director an administrative fee equal to twenty-five percent (25%) of any payment made directly to the employee or employees or made to the director pursuant to this section and chapters 5-23, 25-3 and 28-12 for the first offense." R.I. Pub. Laws 2004, ch. 84.[14] This clear reference to payments made to employees as a result of chapter 25-3 contemplates this 25 percent penalty in § 28-14-19(b) applying to payments made by employers to employees under the Sunday and Holiday Pay Statute. See id. As such, the DLT did not abuse its discretion, and its Decision is not affected by error of law.

IV

Conclusion

After reviewing the entire record, this Court finds the Decision was not affected by error of law based on the evidence of record, and did not constitute an abuse of discretion. Substantial rights of National Grid have not been prejudiced. Accordingly, the Decision is affirmed.

Counsel shall submit the appropriate judgment for entry.

[14] Section 28-14-19 was amended in 2012, and part of the amendments omitted the reference of chapters 5-23, 25-3, and 28-12. See R.I. Pub. Laws 2012, ch. 306. However, it was not enacted until June 20, 2012, after the DLT issued its Decision in this case.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	National Grid v. Rhode Island Department of Labor and Training, Labor Standards Division, et al.
CASE NO:	PC 2012-2673
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 25, 2017
JUSTICE/MAGISTRATE:	Matos, J.
ATTORNEYS:	
For Plaintiff:	Robert P. Brooks, Esq.; Julie A. Sacks, Esq.
For Defendant:	Bernard P. Healy, Esq.; Joseph F. Rodgers III, Esq.