STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 12, 2017)

STEVEN M. LABRIE	:	
	:	
v.	:	**C.A. No. PC-2015-5344**
	:	
STATE OF RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING and TEAMSTERS LOCAL 251	:	

DECISION

CARNES, J. The above-captioned matter is before the Court on an appeal of a decision of the State of Rhode Island Department of Labor and Training (DLT). The DLT found the Plaintiff/Appellant Steven M. Labrie (Mr. Labrie or Plaintiff/Appellant) eligible to receive payment for unused vacation time only for the year 2013, and not for the accumulation of time for the years 2008 through 2012, which Plaintiff/Appellant had originally sought. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Plaintiff/Appellant is a former business agent with Teamsters Local 251 (Union or Local 251). He was employed by Local 251 from 1995 until 2013, serving first as a trustee, then as an assistant business agent, and finally from 2000 until 2013 as a business agent. He was defeated in his bid for reelection in October of 2013, and he thus separated from the Union when his term ended on December 31, 2013. He requested that he be paid for the vacation time that he did not use for the years 2008 through 2013. Plaintiff/Appellant maintains that he is entitled to be paid for

vacation time from all years that he did not use all of the vacation time that he accrued, such years being 2008 through 2013. He submitted a request that he be paid for his unused vacation time, which he believed at the time to be ninety-seven days. He later calculated that he had accumulated 122.5 days of vacation time. Plaintiff/Appellant asserts that under the vacation policy enacted in 2005, when vacation time is not "paid out" the following year, it accumulates until the employee ceases to be employed by the Union, at which time the employee must be paid for all unused vacation time.

However, the Union contends that pursuant to the Union policy in effect at the time Plaintiff/Appellant separated from Local 251, he was only entitled to be paid for unused vacation time accrued the prior year – 2013. The Union argues that the language in the 2005 amendments to the vacation time policy supports the proposition that while vacation time accumulates from year to year, vacation pay can only be distributed the year following the year in which it was earned.

Plaintiff/Appellant filed a complaint with the DLT on January 14, 2014. See Pl.'s Compl. He initially sought payment for ninety-seven unused vacation days. He subsequently amended his complaint to seek payment for 122.5 days. See Pl.'s Compl. ¶ 9.

A duly-noticed hearing was held pursuant to G.L. 1956 § 28-14-19. This hearing was conducted by the DLT over the course of two days: July 7 and August 25, 2014.

Plaintiff/Appellant first called Sharon Frye, the bookkeeper for Local 251. She testified that Mr. Joseph Bairos, who served as secretary-treasurer of Local 251, asked her to calculate the number of unused vacation hours that had been accrued by several former officers who were separated from the Union in 2013, including the Plaintiff/Appellant. Tr. 17-18, July 7, 2014 (Tr. I). Plaintiff/Appellant entered into evidence a document (Complainant's Ex. 1) prepared by Ms.

Frye that calculated the amount of vacation time that the aforementioned officers had taken in the years 2009 through 2013. Mr. Bairos had requested that she do so because he had learned that one or more of the recently separated officers planned to seek payment for unused time for years prior to 2013. Tr. I at 17. Matthew Taibi, the secretary-treasurer of Local 251, thereafter acknowledged receiving a letter from Plaintiff/Appellant dated May 10, 2014 requesting documentation of the amount of vacation time he had taken from 2008 through 2013. Mr. Taibi testified that because he was aware the matter was in litigation, he forwarded the request to the legal counsel of the Union. Id. at 22.

Plaintiff/Appellant testified that he started working for Local 251 as an elected trustee in 1995. Id. at 26-27. He was appointed to the positon of assistant business agent in 1997, and he was elected to the position of business agent in October 2000. Id. at 27. Mr. Labrie testified that he received a salary during the time that he served as a business agent, and he was given a W2 for tax purposes each year. Id. at 27-28. Mr. Labrie identified a document that explained the vacation policy enacted in 2004 (Complainant's Ex. 3), and he identified a document that explained the vacation policy that was enacted in 2005 (Complainant's Ex. 4). Tr. I at 29-31. He explained that he understood the vacation policy enacted in 2005 provided "the option of getting paid out at the end of the year, or not getting paid out and carrying over until you leave office, for whenever you leave office it will be paid out." Id. at 31. He recognized that the amount of vacation time that he took in 2013 was initially overreported by fourteen hours (two days), and he explained the discrepancy by stating that the other officers used two days of vacation time in 2013 to campaign for reelection, and he did not campaign because of "a disability as far as walking around[.]" Id. at 33. He further testified that after his term as business agent ended in December 2013, he attended a meeting of Local 251 on January 26, 2014, addressing the issue of unused vacation time of

Union officers. Id. at 33-34. It was determined that going forward, officers could no longer be paid for unused vacation time. Id. at 34-35.

In his original complaint, Plaintiff/Appellant was seeking to be paid for ninety-seven hours of unused vacation time, not including the aforementioned two days that were in dispute or the unused time for 2008. Id. at 38. He further testified that he used "[j]ust under three weeks" of vacation in 2008. Id. at 38-39. Addressing the issue of officers departing from the Union, he stated that before 2004, "elected officials would have, for every [year] of service they would get a week's pay, vacation or week's pay . . . . when they left their office, when they left service, they would get one week's vacation pay for every year of service." Id. at 40-41. He confirmed that the policy for departing officers and their vacation time, as referenced above, changed in 2004 and again in 2005. Id. at 41.

Plaintiff/Appellant testified that employees of the Union with more than twenty-five years of service "are entitled to six weeks' vacation," and "that's been going on a long time." Id. at 46. According to Plaintiff/Appellant, whenever he took vacation time, he would receive the same paycheck that he would receive in other weeks, and he "didn't get a separate line item for vacation that changed[.]" Id. at 51. He confirmed that the documentation from the Union (Resp't's Ex. 2) indicated that he took "twelve days and fourteen hours [of vacation] in 2013," though he is disputing the fourteen hours. Tr. I at 54. He further confirmed that during 2013, for the weeks during which he used vacation time, he received his "regular paycheck[,] even though [he was] claiming it as a vacation day[.]" Id. at 55. Plaintiff/Appellant further testified that he was seeking to be paid for unused vacation time for the years 2009 through 2013. Id. at 59.

According to Plaintiff/Appellant, he was not seeking payment for any vacation time for the years 2005-2006 because he "didn't carryover" any time at the end of those years. Id. He

further testified that at the end of 2007, he was "paid out" for the time he did not use. Id. According to Plaintiff/Appellant, he contacted Ms. Frye regarding the discrepancy between the time the Union believed he had taken in 2013 and the time he recalls having taken, and this discrepancy was due to an apparent misunderstanding regarding whether he had used two days of vacation for campaigning in October of that year. Id. at 74-75.

Joseph Bairos, who served as secretary-treasurer for Local 251 until December 31, 2013, also testified. Mr. Bairos explained that he and the other officers seeking election were charged fourteen hours of vacation time for campaigning, and he directed Ms. Frye to record that time for each officer. Id. at 78. He later learned that Plaintiff/Appellant was contesting that time, alleging that his disability caused him not to participate in campaigning. He agreed with Plaintiff/Appellant that he should not have been charged for the fourteen hours in dispute for 2013. Id.

Mr. Bairos confirmed that prior to 1995, officers "leaving the employ of Local 251" would receive "a week's pay, a vacation pay for every year of service." Id. at 79. He testified that after 1995 and prior to the changes that were made in 2004, the policy was that officers could carry forward up to one-half of the vacation time they received each year. Id. at 80. Then, in 2005, the vacation policy for officers of Local 251 was again changed to the policy that the parties agree was in effect at the time that Plaintiff/Appellant separated from the Union in 2013. Mr. Bairos testified that under this policy there were no limitations on the amount of unused vacation time that could be carried over, and that an officer could carry "up to your six weeks if you didn't take any time, you could carry six weeks over." Id. In response to questioning as to whether, under this policy, officers had the option of being paid for unused vacation time at the end of the year, he responded, "You could, but no one took it, they just kept carrying it over." Id. at 81.

Mr. Bairos further testified that following his separation from the Union on December 31, 2013, he was paid for the unused vacation time that he accrued in 2013. Id. at 84. He confirmed that he was not paid for any unused vacation time for any previous years. Id. at 86-87. When asked if he sought to be paid for unused vacation time for previous years following his separation from the Union, Mr. Bairos responded that he did not:

> "[A]t that particular time because we were still in the midst of a protest and we hadn't gotten a decision from the Department of Labor, the Federal Department of Labor, once we got that decision then I made a claim for those other years. Once they ruled that we would not get a re-election that (sic) I made the claim for the previous years." Id. at 87.

Mr. Bairos also testified that, in November 2013, he removed Ms. Linda Russolino from her position as an appointed business agent. Id. at 92-93. According to Mr. Bairos, she received, upon her separation, a check for her vacation time that she did not use in 2013, and she was not paid for any other unused vacation time. Id. at 93. The Hearing Officer inquired as to whether "she was only paid for those unused vacation days from 2013 because she didn't request the vacation, her other unused vacation days from those previous years," to which Mr. Bairos responded in the affirmative. Id. at 101. He elaborated that the issue of whether employees are entitled to be paid for unused vacation time from prior years "had never came up until 2013." Id. He could not recall any departing employee "who received a lump sum payment of vacation pay based on their accrued time going back, 5, 6, 7 years[.]" Id. at 102. Rather, he confirmed that "when people knew they were going to leave during the calendar year . . . . they would use up their time during the year and then leave at the end[.]" Id. at 102-03. Mr. Bairos testified that he did not make a claim for his unused vacation time at the same time as Mr. Labrie because he was contesting the results of the October 2013 election "hoping that it would get overturned," and, if it were, he "would still be an employee of the local carrying that time over." Id. at 103.

Mr. Jerry Blinkhorn, a former officer of Local 251, next testified. First elected to be a business agent in 1977, he later served as secretary-treasurer, a position in which he served until his retirement in 1995. Id. at 104. He explained that at the time of his retirement, an officer who retired from the Union would receive "[o]ne week's pay for every year that we were there, [as] an officer." Id. at 105. According to Mr. Blinkhorn, there was, at that time, no official policy regarding the carrying of vacation time. Id. Mr. Blinkhorn testified that on two occasions, once in 1990 and once in 1992, he received Temporary Disability Insurance (TDI) benefits when he was unable to work due to heart problems. He further testified that during the time he was collecting TDI benefits, he also received his regular salary from the Union. Id. at 105-06. According to Mr. Blinkhorn, when he retired from the Union, the time during which he was receiving TDI benefits was not deducted from his service time for purposes of calculating his severance pay. Id. at 106.

Mr. James Croce next testified for the Plaintiff/Appellant. In 2005, he was a vice-president at Local 251, and at that time, had held that position for less than one year. Id. at 109. He was at the September 2005 meeting at which the officers changed the vacation policy to that which was in effect when Mr. Labrie separated from the Union in 2013. Id. Mr. Croce further testified that prior to the aforementioned meeting in 2005, the policy of the Union was that officers could carry forward unused vacation time of up to one-half of the time to which they were entitled for a particular year. Id. at 110. He confirmed that the policy was changed in 2005 to allow Union officers to carry forward all unused vacation time. Id. at 111. Mr. Croce was also present at the January 2014 meeting at which it was decided that officers of the Union would no longer be allowed to carry forward unused vacation time. Id. at 112. According to Mr. Croce, Mr. Labrie inquired as to whether the Union planned to apply the new policy retroactively, and he (Mr. Labrie) was told that the Union did not have any such plan. Id.

On cross-examination, Mr. Croce confirmed that the position of vice-president was a part-time position, and that he became an assistant business agent (a full-time position) in April 2009, a position he held until December 31, 2013. Id. at 113-14. Following his separation from the Union, he received a payment for unused vacation time that he accrued in 2013. Id. at 114. He elaborated that on January 31, 2014, he received a payment for 116 hours of unused time from 2013. Id. at 115. In 2013, he was entitled to twenty-five vacation days per year, of which he took eight. Id. at 116. He confirmed that though he did not use all of his vacation time in either 2011 or 2012, he received payment in January 2014 only for his unused 2013 vacation time. Id. at 120. He further testified that he did not file a complaint regarding his not being paid for unused time from 2011 and 2012 because he "just didn't feel like going through the process." Id. at 121.

The next witness called by the Plaintiff/Appellant was Mr. James Boyajian, who had served Local 251 as a business agent and as president before retiring in December 1995. Tr. at 131, August 25, 2014 (Tr. II). He testified that on two occasions "in the 70's maybe the early 80's," he received Workers' Compensation benefits, and he also received his regular salary during that time. Id. at 135-36. Mr. Boyajian further testified that when he left the Union in December 1995, the Union "didn't have anything in writing as far as vacation." Id. at 136. However, his "understanding was that" upon separation from the Union, he "would get a week's pay and I considered vacation or a week's pay for every year I served. When I left I get 24 weeks' pay" and "a Cadillac." Id. at 136-37.

Local 251 then called Mr. Douglas Teoli, who served as an assistant business agent from 2003 or 2004 until 2013. Id. at 141-42. According to Mr. Teoli, when he sought approval for vacation time, he would submit the request either to Mr. Bairos (principal officer of Local 251) or to Ms. Frye (bookkeeper for Local 251). Id. at 143. He identified an exhibit presented by Local

251 as a vacation request form that he submitted on November 1, 2013 for vacation time that he was requesting for December 2013. Id. at 143-44. He further testified that subsequent to his vacation request, he became disabled, and his last day of work was December 13, 2013, after which he collected TDI benefits. Id. at 145. He confirmed that some of the time during which he was collecting TDI benefits overlapped with time for which he had originally requested vacation time. Id. at 148. Mr. Teoli also testified that Mr. Bairos informed him that he could not be paid for vacation time while collecting TDI benefits, as such a practice would be considered "double dipping." Id. at 149. When asked if he was paid his regular salary during the time he was collecting TDI benefits, he responded, "I don't think I did." Id. at 150. After making inquiry to the new administration that took office at the beginning of the year, he did receive vacation pay in January 2014. Id. at 151. Mr. Teoli testified that he was present at the 2005 Union meeting at which the officers of Local 251 voted to modify the vacation pay policy to permit officers to carry forward, without limit, any unused vacation time they had not used by the end of the year. Id. at 153-54. When asked if he participated in the discussion of this change in policy, he responded, "No." Id. at 154-55.

Ms. Frye, bookkeeper for Local 251, was the next witness called by Local 251. She testified that she had, at that time, been employed by Local 251 in that position for seventeen years—since June 1997. Id. at 160. She confirmed that she has worked as the bookkeeper under several administrations, including that of the current secretary-treasurer, Mr. Matthew Taibi. Id. She also worked as bookkeeper under the administrations of Mr. Joseph Bairos and Mr. Stuart Mundy. Id. She testified that her duties as bookkeeper include "[p]ayroll, disbursements, [and] record keeping." Id. at 161. According to Ms. Frye, she also collects vacation requests after they have been approved by a principal officer, and she would "track what everybody's got for

vacation and make sure at the end of the year everybody's vacation pay is up to date or if they have extra what they are carrying over the next day [sic], if they are carrying over." Id. She testified that in the seventeen years that she had (as of the time of the hearing) worked as a bookkeeper for Local 251, she had never observed any departing employee being paid for any vacation time other than that accrued in the previous year. Id. at 161-62.

According to Ms. Frye, Union records indicate that Mr. Teoli was collecting TDI benefits in the latter part of 2013. Id. at 162. She stated that he did not receive his regular salary during the last two weeks of 2013 because he received vacation pay. Id. Ms. Frye further testified that she is not aware of any employee receiving vacation pay and their regular salary for the same week. Id. at 164. She confirmed that prior to the aforementioned 2005 modifications, the policy allowed Union officers to be paid for unused vacation time up to a limit of one-half the officer's vacation time for the year; that is, an employee entitled to thirty days of vacation could be paid for a maximum of fifteen days of unused time. Id. at 166.

Ms. Frye testified that during her time as bookkeeper for Local 251, she had, previous to the 2013 election in which Plaintiff/Appellant (and others) were removed from their positions, never been asked to calculate unused vacation time for any years other than the previous year. Id. at 176. She further testified that after the October 2013 election, Mr. Bairos, the departing secretary-treasurer, asked her to calculate the unused vacation time of the departing officers dating back to 2009. Id. According to Ms. Frye, "from 2005 up until the present," she did not keep track of vacation time that officers did not use further back than the prior year. Id. at 177. She elaborated that the accumulated vacation time from prior years did not appear on any pay stubs, nor did it appear on annual statements. Id. Ms. Frye testified that when there was a payout of unused vacation time, the Union would calculate the amount to be paid out based on the salary

rate of the prior year. Id. at 178. She explained that she would use the amount that the person was paid at the beginning of the calendar year "before all the taxes were maximized." Id. at 179.

Ms. Frye addressed the payout for unused vacation time that was paid to Mr. Teoli upon his separation from the Union at the end of 2013. She testified that although he had unused vacation time from 2009, 2010, 2011, and 2012, he only requested that he be paid for unused vacation time from 2013. Id. at 181-82. She confirmed that he did not request that he be paid for any time prior to 2013, and that she had never processed a payment for anyone for unused vacation time that was accrued prior to the previous year. Id. at 183.

With respect to the payment for unused vacation time that was paid to Ms. Linda Russolino following her separation from the Union in November 2013, Ms. Frye explained the Union paid Ms. Russolino for her thirteen-and-a-half days of unused vacation time accrued in 2013 following said separation. Id. at 184-85. She confirmed that Ms. Russolino did not use all of the vacation time that she accrued in the years 2009, 2010, 2011, and 2012. Ms. Frye confirmed that the Union did not pay Ms. Russolino for any unused time for those years, nor did Ms. Russolino ask to be paid for such time. Id. at 185-86. She elaborated that Mr. Bairos, principal officer at the time, did not direct her to make a payment for that unused time. Id. at 186.

Ms. Frye confirmed that prior to November 2013, Ms. Russolino worked for Local 251 as an assistant business agent, a position that is appointed by the principal officer (in Local 251, the secretary-treasurer). Id. at 188-89. Officers in those positions could be terminated at any time, as opposed to business agents, who are elected to a three-year term. Id. at 190. She testified that while she does not recall paying employees of Local 251 vacation pay and their regular salary, retiring employees were permitted to use vacation time at the end of their time with the Union. That is, Ms. Frye acknowledged that an employee scheduled to retire on December 31 could, if he

or she had sufficient unused vacation time, cease working months in advance of that date and use his or her unused vacation time in order to continue to be paid by the Union through their scheduled retirement date. Id. at 192.

Ms. Frye confirmed that Mr. Teoli, one of the officers who separated from the Union on December 31, 2013, received TDI benefits for some of December 2013. Id. at 193. She also confirmed that under the vacation policy approved on February 29, 2004, departing officers would, upon separation from the Union, receive payment for unused vacation time up to a limit of one-half of their accrued vacation time. Id. at 197. She testified that though she did not see the specific record of the September 25, 2005 meeting at which a modification to the vacation policy was approved, she was aware that the Union's policy regarding unused vacation time did change in 2005. According to Ms. Frye, the policy of being paid for unused time only applied to officers, and she and others who were "part of the office staff" did not have that option, as they had to use all vacation time or carry it into the following year. Id. at 205-06.

Ms. Frye also noted that Mr. Labrie was the first employee of Local 251 to request payment for unused vacation time "for prior years" during the time she has been employed by the Union. Id. at 212. She became aware that Mr. Labrie was seeking to be paid for unused vacation time for years prior to 2013 when Mr. Taibi (the newly elected secretary treasurer) asked her to retrieve the records for Mr. Labrie's prior vacation accrual. Id. at 212-13.

Mr. Taibi, who succeeded Mr. Bairos as principal officer of the Union in January 2014, testified that shortly after he took office as secretary-treasurer on January 1, 2014, he became aware of the Plaintiff/Appellant's request for payment for unused vacation time for prior years. Id. at 218. According to Mr. Taibi, after consulting with Ms. Frye and Mr. Teoli, he determined that Mr. Labrie was entitled to be paid for unused vacation time accrued in 2013. Id. at 219. At

the request of Local 251's counsel, Mr. Taibi sent Plaintiff/Appellant a letter offering to pay him for his unused vacation time that accrued in 2013. Id. at 220.

Mr. Taibi testified that he spoke to Ms. Frye and Mr. Gursky regarding the request from Mr. Labrie, and he examined the records of the other officers who had separated from the Union at the end of 2013. Id. at 222-23. He also examined applicable Rhode Island law, specifically § 28-14-4, which governs payment due employees upon separation from their employer. Id. at 224. He explained that his intent was to be consistent in addressing payouts to departing officers. Id. at 225. Mr. Taibi acknowledged that the policy approved in September 2005 was applicable to those officers who separated from the Union at the end of 2013. Id. at 229-30. He testified that regarding unused vacation time, his understanding was that "assistant business agents, business agents and the secretary-treasurer can carryover their vacation time from year to year until they leave employment . . . or be paid out for unused vacation time the following year. So each year they face the option of carrying over their vacation or being paid out." Id. at 232.

Mr. Taibi testified that he was present at the January 26, 2014 meeting at which Local 251 modified its vacation policy so that "officers, agents and local employees could no longer be paid out for unused accrued vacation pay, except where applicable by law." Id. at 235. According to Mr. Taibi, the reason for the modification was that "our executive board had established a policy for ourselves that was actually very clear . . . that there would not be a payout." Id. He confirmed that the "current policy" did not allow for officers to be paid for unused vacation time, while conversely, the "old policy" did allow for such payment. Id. at 236. Mr. Taibi reiterated that it was his understanding that the policy in effect at the time Plaintiff/Appellant separated from employment with the Union, an officer or business agent could "carryover vacation from year to year, or . . . . be paid out the following year." Id. at 238.

Subsequent to the above testimony which was heard by the DLT on July 7 and August 25, 2014, the parties each submitted memoranda in support of their respective interpretations of the vacation policy of Local 251. Mr. Labrie argued that under the terms of the vacation policy in effect when he separated from the Union in December 2013, he was entitled to be paid for all unused vacation time for the years 2008-2013. Conversely, the Union argued that he was only entitled to be paid for unused vacation time earned in 2013.

The Hearing Officer rendered a decision on October 1, 2015. In her decision, the Hearing Officer determined that Mr. Labrie was only entitled to vacation pay for 2013, though he had unused vacation time for the years 2008 through 2012. Pl.'s Ex. 1. She ordered Local 251 to pay to Mr. Labrie $5577.99 plus interest in the amount of $1227.16 for a total of $6805.15. Id. The Hearing Officer also ordered that Local 251 pay a civil penalty of $5000 for a violation of § 28-14-8 (an employer cannot impose condition on wages not in dispute), the proceeds of such funds to be submitted in two separate checks payable in the amount of $2500 to Mr. Labrie and $2500 to the DLT. See Order dated October 1, 2015.

Finally, the Hearing Officer awarded Plaintiff/Appellant "reasonable attorney's fees" and directed that counsel for Plaintiff/Appellant submit an accounting for the fees claimed. Id. However, while the Plaintiff/Appellant sought attorney's fees of $19,773.50 and $80.65 for out-of-pocket expenses (for a total of $19,854.15), the Hearing Officer chose to award $10,000. Pl.'s Ex. B. Though she did not award Plaintiff/Appellant the full amount he sought to be paid for his unused vacation time, she nonetheless found he was entitled to attorney's fees, and she explained her conclusion in her "Decision Addendum Regarding the Award of Attorneys' Fees" rendered on November 13, 2015. She noted that

> "the Union offered several procedural arguments as to why the Department should not even hear Mr. Labrie's case. Consequently,

> these arguments had to be addressed first before any consideration was given to the substantive argument concerning vacation pay. The Department considered the Union's procedural arguments and found them all to be without merit. If the Department had found merit in any one of the Union's procedural arguments, Mr. Labrie's claim would have ended there, without any discussion of the substantive claim." Decision Addendum at 4.

She also noted that "the Department determined that Mr. Labrie was entitled to more vacation days from 2013 than Local 251 submitted." Id. She therefore concluded that Mr. Labrie was a prevailing party and thus entitled to an award of reasonable attorney's fees. Id. at 5.

II

Standard of Review

The review of a decision by a state agency by this Court is governed by the Administrative Procedures Act. Section 42–35–15(g) of the Act provides that:

> "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
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of witnesses or the weight of the evidence concerning questions of fact. Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). The court's

review is limited to determining whether substantial evidence exists to support the department's decision. Newport Shipyard, Inc. v. R.I. Comm'n for Human Rights, 484 A.2d 893, 897 (R.I. 1984). If '"competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions."' Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

It is well settled 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."' Id. at 97 (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)); see also Unistrut Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 99 (R.I. 2007) (quoting Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003)) ("'[W]hen the administration of a statute has been entrusted to a governmental agency, deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized."').

"If competent evidence exists in the record considered as a whole, the court is required to uphold the agency's conclusions. However, it may reverse, modify, or remand the agency's decision if the decision is violative of constitutional or statutory provisions, is in excess of the statutory authority of the agency, is made upon unlawful procedure, is affected by other errors of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious and is therefore characterized by an abuse of discretion." Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992) (citing § 42-35-15(g)).

III

DLT Hearing

Section 28-14-4(b) of the Rhode Island General Laws provides that when "an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by . . . . written or verbal company policy, or any other . . . . agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee." Plaintiff/Appellant thus argues that the Union must pay his unused vacation time as "wages." Conversely, Local 251 argues that the policy in effect at the time provided employees with the option of receiving payment for unused vacation time at the end of the year or carrying the time forward the following year. According to the Union's position, such time that is carried into the following year can be used as vacation "time" but is no longer redeemable for vacation "pay" upon separation.

The vacation policy of Local 251 has undergone several alterations since the time that Mr. Labrie commenced his employment with said Union. The 2004 policy required those employees subject to its provisions to "use or lose" at least one-half of their allotted vacation time. Such employees were permitted to carry forward a maximum of one-half of their vacation time each year. See Tr. I at 29-30 (Testimony of Mr. Labrie) (Complainant's Ex. 3); see also Tr. I at 79-80 (Testimony of Mr. Bairos). The 2005 policy (which all parties agree applies to Plaintiff/Appellant) gives covered employees two options: carry unused vacation time from year to year or be paid for unused vacation time the following year. See id. at 30-32, 60-62 (Testimony of Mr. Labrie); see also id. at 80-81 (Testimony of Mr. Bairos). The 2014 policy (enacted shortly after Plaintiff/Appellant terminated on December 31, 2013) requires covered employees to "use or

lose" all vacation time each year; that is, vacation time that was not used in any given year could not be carried to the next year, and employees also could not be "paid out" by the Union for any unused time. Mr. Labrie specifically testified that he attended the January 2014 meeting at which the current policy was approved in order to inquire as to whether the new policy was to be applied retroactively to his case. He was satisfied to learn that the Union had no intention of retroactively applying the new policy. See id. at 34-35 (Testimony of Mr. Labrie). Mr. Croce testified that the vacation policy was modified at a January 2014 Union meeting. His testimony confirmed that of Mr. Labrie. See id. at 111-12. The Union has not challenged that the policy enacted in 2005 is applicable to Mr. Labrie.[1]

Local 251 argues that the Hearing Officer was correct in finding that the Union policy at issue was "unambiguous and . . . [therefore] Mr. Labrie is entitled to vacation pay for year 2013 only." Decision at. 7. Conversely, Plaintiff/Appellant argues that he is entitled to be paid for all unused vacation time accrued in the years 2008-2013. Id. at 1-2.

The parties agree that the 2005 vacation policy is binding upon them, and therefore, the Hearing Officer analyzed the policy pursuant to our law of contracts. Id. at 7. It is well settled in Rhode Island that if the language of a contract is "found to be unambiguous . . . the task of judicial construction is at an end and the parties are bound by the plain and ordinary meaning of the terms of the contract." Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249, 1259 (R.I. 2003) (citing Malo v. Aetna Cas. and Sur. Co., 459 A.2d 954, 956 (R.I. 1983)). When

[1] As a preliminary matter, this Court notes that Local 251, at the commencement of this litigation, contested the jurisdiction of this Court, asserting that federal labor law preempts state jurisdiction. However, the Union did not, in its Memorandum of May 23, 2016 in support of the decision of the DLT, contest that the DLT has jurisdiction over this dispute. Plaintiff similarly did not, in his Reply Memorandum of June 28, 2016, assert that the DLT lacks jurisdiction over this dispute. Therefore, this Court concludes the parties have conceded that the DLT and this Court can properly exercise jurisdiction. See generally Peloquin v. Haven Health Ctr. of Greenville, LLC, 61 A.3d 419 (R.I. 2013) (argument not presented is deemed to be waived).

determining if a "contract is ambiguous, the court should read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'" Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009) (quoting Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995)).

IV

Union Vacation Policy Applicable to Mr. Labrie

The vacation policy that was in effect when Mr. Labrie separated from the Union specifically provides that officers of the Union "shall be allowed to carry over the vacation time from year to year or be paid out for unused vacation time the following year." See Pl.'s Ex. 4.[2] In her decision, the Hearing Officer emphasized that the word "or" indicated that Union officers had two options regarding vacation pay. The parties agree that the second option permits such officers to be paid for their unused time at the end of each year. The Union asserts that if an officer is not paid for unused vacation time for the previous year, he or she may carry forward that vacation time, but he or she loses the right to be paid for that time. The Hearing Officer agreed with the interpretation of the Union, which had argued that the interpretation advanced by Mr. Labrie would cause the word "or" to be without meaning. Decision at 7.

Mr. Labrie, however, argues that his interpretation does not negate the disjunctive word "or" upon which the Hearing Officer seemed to rely in her decision. In the years 2005 and 2006, Mr. Labrie used all of the vacation time to which he was entitled. He did not do so in 2007. He elected to be paid for the time at the end of that year, and he therefore did not "carry forward" any time for the years 2005-2007. Tr. I at 59-60. He now seeks to be paid for the years in which he

[2] The exact policy provision applicable to Mr. Labrie, enacted September 25, 2005, in its entirety reads: "Assistant Business Agents, Business Agents, and the Secretary-Treasurer shall be **allowed to carry over the vacation time from year to year** until they leave employment with the Local Union **or be paid out** for unused vacation time **the following year.**" (emphasis added).

did not use all of the vacation time to which he was entitled and was not "paid out" at the end of that year (2008-2013). See Pl.'s Mem. and Pl.'s Ex. 1.

As noted above, the Union argues that the DLT correctly found the applicable vacation policy to be unambiguous in that it provided two options for officers such as Mr. Labrie regarding vacation time that they did not use in a given year, and that when Mr. Labrie did not choose to be paid for that time at the end of a year, he could carry forward that time, but he no longer had the right to be paid for that time. The Union further argues that such a finding is entitled to deference, and that the decision of the DLT must be upheld where there is "any legally competent evidence therein to support the agency's decision." Barrington Sch. Comm., 608 A.2d at 1138 (citing Blue Cross & Blue Shield v. Caldarone, 520 A.2d 969, 972 (R.I. 1987); Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977)).

This Court is mindful of the deference that must be given to the findings of an administrative agency. When reviewing such a decision, a "trial justice 'shall not substitute [his or her] judgment for that of the agency as to the weight of the evidence on questions of fact.' Rather, the trial justice must uphold the agency's conclusions when they are supported by legally competent evidence on the record." Interstate Navigation Co. v. Div. of Pub. Utils., 824 A.2d 1282, 1286 (R.I. 2003) (quoting Rocha v. State Pub. Utils. Comm'n, 694 A.2d 722, 725 (R.I. 1997) (internal quotations omitted)).

However, this deference is applicable to questions of **fact**. It is well settled under Rhode Island law that '"[a]lthough this Court affords the factual findings of an administrative agency great deference, questions of law—including statutory interpretation—are reviewed de novo.'" McAninch v. State of R.I. Dep't of Labor and Training, 64 A.3d 84, 86 (R.I. 2013) (quoting Iselin v. Ret. Bd. of the Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008)).

Our neighboring jurisdiction recently addressed a case similar to that of Mr. Labrie. Chapter 149, § 148 of the Massachusetts General Laws Annotated (M.G.L.A.) (§ 148 or Wage Act) provides in pertinent part that "any employee leaving his employment shall be paid in full on the following regular pay day" and that "'wages' shall include any holiday or vacation payments due an employee under an oral or written agreement." In Elec. Data Sys. Corp. v. Attorney Gen, 907 N.E.2d 635 (Mass. 2009), the highest Court in Massachusetts held that the Attorney General properly interpreted the Wage Act in finding that a separated employee was entitled to be paid for accrued vacation time after his separation from employment.

In the Elec. Data Sys. Corp. case, the employer had enacted a policy similar to that enacted by Local 251 after Mr. Labrie terminated employment. That is, employees were not permitted to carry forward unused vacation time, and vacation time earned in any year was "to be used by December 31 of that year or lost." Id. at 637 (emphasis added). However, the court held that though employees were not permitted to be paid for unused time at the end of a year, employees terminated during the year that had used less vacation time than that to which they were entitled must be paid for that time. Id. at 641-42 (emphasis added).

The case before this Court differs in that the Union policy in effect when Mr. Labrie left the employ of Local 251 permitted officers to be paid for unused vacation time upon separation from the Union. However, Elec. Data Sys. Corp. did hold that unused vacation time must be paid as wages due upon the termination of an employee. Id. The parties' dispute centers on whether departing employees may be paid for unused time for years other than the "previous year" to that in which the employee is making the claim for payment.

Our statute regarding wages due a separating employee provides that:

> "[W]henever an employee separates or is separated from the payroll of an employer after completing at least one year of

> service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee." Sec. 28-14-4(b)

As noted above, the applicable Massachusetts statute provides that '"wages' shall include any holiday or vacation payments due an employee under an oral or written agreement." M.G.L.A. 149 § 148. Our statute contains similarly strong language providing that upon separation of an employee, vacation pay that the employee has accrued, but has not used, "shall become wages[.]" See § 28-14-4(b).

While not controlling in our jurisdiction, the decision in Elec. Data Sys. Corp. is persuasive in the present case due to the similarity of the Rhode Island statute to the corresponding Massachusetts statute. Additionally, there is considerable support for the conclusion that under Rhode Island law (and that of most United States jurisdictions), unused vacation time, in the event an employee terminates his or her employment with an employer, shall be payable as wages. See Mass. v. Morash, 490 U.S. 107, 109-10, 109 S.Ct. 1668, 1670 (1989). The Supreme Court in Morash found:

> "Under the Massachusetts law, an employer is required to pay a discharged employee his full wages, including holiday or vacation payments, on the date of discharge. Similar wage payment statutes have been enacted by 47 other States, the District of Columbia, and the United States, and over half of these include vacation pay." Id.

Section 28-14-4(b), the governing statute in Rhode Island, provides that when "an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by . . . written or verbal company policy . . . shall become wages and payable . . . with all other due wages on the next regular payday for the employee." As noted above, '"questions of law—including statutory interpretation—are

reviewed de novo"' by this Court when reviewing the decision of an agency. McAninch, 64 A.3d at 86 (quoting Iselin, 943 A.2d at 1049).

Mr. Labrie was an officer of the Union covered by a "written company policy" which gave officers the option of carrying forward unused vacation time or being paid at the end of the year for such time. Section 28-14-4 clearly states that vacation "pay" is payable upon separation from employment. The Union attempts to evade this mandate by arguing that the Union policy distinguishes between vacation "time" and vacation "pay," and while vacation "time" can be carried forward from year to year, vacation "pay" can only be paid for the previous year. However, the applicable statute does not make any distinction between vacation "time" and vacation "pay." See 3 Sutherland Statutes and Statutory Construction § 46.4 (7th ed. 2009) ("Courts cannot insert words into a statute where the language, taken as a whole, is clear and unambiguous[.]"). This Court is not persuaded that such a distinction is permitted under Rhode Island law, as this Court is not aware of any legal precedent for such a distinction.

The DLT's finding—that Mr. Labrie was not entitled to be paid for unused vacation time for the years 2008 through 2012—was clearly erroneous and an abuse of discretion. The finding of the DLT was violative of statutory provisions and thus in excess of the statutory authority of the agency. The Court therefore reverses the decision of the DLT to deny Mr. Labrie payment for unused vacation time for the years 2008 through 2012. The Court finds Mr. Labrie is entitled to such time.

V

Attorney's Fees

Plaintiff/Appellant also seeks an award of attorney's fees pursuant to the statute governing the powers and duties of the Director of the DLT—Section 28-14-19(c). The statute provides, in

pertinent part, that pursuant to a favorable judgment for a complaining party that asserts that he or she is owed unpaid wages, "the order may direct payment of reasonable attorneys' fees and costs to the complaining party."

In determining "reasonable" attorney's fees, the Hearing Officer was guided by Rule 1.5 of Article V of the Rules of Professional Conduct of our Supreme Court. This Rule provides that:

> "factors to be considered in determining the reasonableness of a fee include the following:
> "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> "(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> "(3) the fee customarily charged in the locality for similar legal services;
> "(4) the amount involved and the results obtained;
> "(5) the time limitations imposed by the client or by the circumstances;
> "(6) the nature and length of the professional relationship with the client;
> "(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> "(8) whether the fee is fixed or contingent." Rule 1.5 of Article V of the Rhode Island Supreme Court Rules of Professional Conduct

Here, the DLT found that Mr. Labrie was entitled to reasonable attorney's fees. See Decision Addendum. She noted that while this case did not involve a novel issue of law, it was more complicated than a standard non-payment of wages case because the parties had differing interpretations of the applicable vacation policy. Id. at 2. The case apparently did not require the attorney to decline other employment, as it necessitated 63.40 hours over the course of approximately sixteen months, an average of less than one hour per week. Id. Two attorneys worked on behalf of Plaintiff/Appellant; one billed at $350 per hour, and the other billed at $250 per hour. Additionally, the firm retained by Plaintiff/Appellant assigned two paralegals to this

case, and both billed at $105 per hour. Id. The Hearing Officer found that the time logs submitted by counsel for Plaintiff/Appellant were sufficiently detailed, and she rejected the assertion of the Union that they were "vague." Id. She also rejected the argument of the Union that the aforementioned rates were "excessive" for an administrative hearing, and she specifically found that the DLT "has consistently accepted comparable hourly rates" in prior hearings. Id. at 3. While she found that Mr. Labrie was entitled to be paid for vacation time only for the year 2013, and not for the years 2008-2012 as he had requested, she rejected the Union's assertion that Plaintiff/Appellant did not "prevail on any significant claim." Id. at 3-4. In her decision, the Hearing Officer addressed the Union's assertions that the DLT did not have jurisdiction over this matter, and she found their arguments to be without merit. Decision at 4-5. In her decision regarding fees, she noted that had she found merit in any of the procedural arguments of the Union, "Mr. Labrie's claim would have ended there, without any discussion of the substantive claim." Decision Addendum at 4. She also noted that "the Department determined that Mr. Labrie was entitled to more vacation days from 2013 than Local 251 submitted." Id. She found that the decisions in favor of Mr. Labrie were "not insignificant." Id. She determined that given the assertion of Plaintiff/Appellant's counsel that it worked on this matter for 63.40 hours over the course of approximately sixteen months, "it is reasonable to conclude that this case did not impose great time limitations on the firm's schedule and other commitments." Id. She also found that counsel for Plaintiff/Appellant "was highly professional and able [in] his representation of Mr. Labrie throughout the course of this matter. The rates of the attorneys and the paralegals associated with this case were fixed – based on experience and skill set." Id.

However, the Hearing Officer, after rejecting the argument of Local 251 that the fees submitted were "excessive" and noting that the DLT had "consistently accepted comparable

hourly rates" for attorneys and paralegals for services performed pursuant to an administrative hearing, id. at 3, determined that the amount requested, $19,773.50, was "unreasonable." Id. at 5. She instead awarded attorney's fees in the amount of $10,000. Id. She made this determination despite the fact that she did not question any of the accounting entries submitted by Plaintiff/Appellant's counsel. Id. at 2-3.

Section 28-14-19(c) provides that "[t]he order shall . . . direct payment of any wages and/or benefits found to be due and/or award such other appropriate relief or penalties authorized under chapter 28-12 and/or 28-14, and the order may direct payment of reasonable attorneys' fees and costs to the complaining party." Whether the Plaintiff/Appellant's being only partially successful in his claim before the DLT motivated the reduction in the award of attorney's fees from the requested $19,773.50 to $10,000, this Court can only speculate. However, this Court finds nothing in the record before it that warrants such a reduction. Accordingly, the Court cannot uphold the finding that the amount requested was unreasonable.

The Court recognizes that "courts will uphold administrative decisions . . . as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical, and supported by substantial evidence." Goncalves v. NMU Pension Trust, 818 A.2d 678, 683 (R.I. 2003) (citing Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir. 1998)). Here, the Hearing Officer acknowledged that the billing rates submitted were in accord with "consistently accepted . . . hourly rates" that the DLT had approved in administrative hearings. Decision Addendum at 3. She did not question any of the accounting entries submitted by Plaintiff/Appellant's counsel. Id. at 2-3. Therefore, the reduction of attorney's fees was not "rational, logical, and supported by substantial evidence." Goncalves, 818 A.2d at 683 (citing Doyle, 144 F.3d at 184) (further citations omitted).

This Court finds that the Hearing Officer's decision—that the amount of attorney's fees requested by counsel for Plaintiff/Appellant was unreasonable—is arbitrary and an abuse of discretion. The Court thus grants the request of counsel for Plaintiff/Appellant for attorney's fees in the amount of $19,773.50.

VI

Conclusion

For the reasons stated above, this Court reverses that portion of the decision of the DLT denying Mr. Labrie payment for unused vacation time for the years 2008 through 2012. The Court finds the policy interpretation of DLT to be contrary to the plain meaning of the applicable statutes and relevant case law. Therefore, the Court finds the decision of the DLT is not supported by the reliable, probative, and substantial evidence on the record, and is an abuse of discretion, clearly erroneous, and affected by error of law. Substantial rights of the Plaintiff/Appellant have been prejudiced. The Union is therefore ordered to pay Plaintiff/Appellant the value of his unused vacation time for the years 2008 through 2013. Additionally, the Court finds that Mr. Labrie ought to have prevailed on all of his claims before the DLT, and the request of counsel for Plaintiff/Appellant for attorney's fees was not unreasonable. The Court therefore grants the request for attorney's fees in the amount of $19,773.50. Counsel shall prepare appropriate orders for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Steven M. Labrie v. State of Rhode Island Department of Labor and Training, et al.**
CASE NO:	**PC-2015-5344**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 12, 2017**
JUSTICE/MAGISTRATE:	**Carnes, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph F. Penza, Jr., Esq.**
For Defendant:	**Bernard P. Healy, Esq.** **Marc B. Gursky, Esq.**