STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: May 17, 2019)

NANCY LANGLOIS	:	
	:	
v.	:	**C.A. No. PC-2010-0909**
	:	
FRANK T. CAPRIO, GENERAL TREASURER IN HIS CAPACITY AS CHAIRMAN OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

PROCACCINI, J. Appellant Nancy Langlois (Appellant) appeals from the decision of the Employees' Retirement System of Rhode Island (ERSRI or Board), wherein the Board unanimously affirmed the decision of the hearing officer Raymond A. Marcaccio (Hearing Officer). In that decision, the Hearing Officer affirmed the administrative decision of Frank J. Karpinski (Karpinski), Executive Director of ERSRI, denying Appellant's request for full service credit for the period of time between 1990 and 1994 during which she worked twenty-one hours per week in a thirty-five hour per week position and further denied Appellant's request to purchase the time.

On April 26, 2012, this Court remanded the case to the Board and directed it to consider the issue of Appellant's eligibility to receive one year of service credit towards retirement for the years at issue. On October 24, 2012, the Hearing Officer issued a second decision addressing the issue as directed by this Court. On December 12, 2012, the Board upheld the Hearing Officer's decision in a 13-1 vote. The case is now before

this Court for a final review of the Board's decision. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Portions of the facts are excerpted from this Court's Decision of April 26, 2012, remanding this case to the Board for further findings of fact and conclusions of law. For twenty-eight years, Appellant worked as an engineering technician for the Rhode Island Department of Environmental Management (DEM or Department). (Hr'g Tr. at 5:10-17, Sept. 10, 2009) (2009 Hr'g Tr.) In 1988, Appellant took a maternity leave from work, thereafter returning in 1990. (Hr'g Tr. at 3:20-21, Dec. 12, 2012) (2012 Hr'g Tr.) Upon Appellant's return to work in 1990, Appellant was placed in a different position within the Department. (2009 Hr'g Tr. at 6:14-17.) The new position accommodated Appellant's family situation by allowing her to work twenty-one hours per week in a thirty-five hour per week position. (2009 H'rg Tr. at 6:12-17.) Appellant continually worked twenty-one hours per week, until returning to a thirty-five hour work week in 1994. (2009 Hr'g Tr. at 6:18-20.)

During the period from 1990 through 1994, in which Appellant worked a twenty-one hour work week, Appellant contributed to ERSRI on a prorated basis and accordingly received fractional service credit towards her retirement credit. (2009 Hr'g Tr. at 82:11-83:3.) Upon returning to her full–time work week of thirty-five hours in 1994, Appellant's contribution to ERSRI increased, and she thereafter began to receive one year of service credit towards her retirement for each year she worked a thirty-five hour work week. (2009 Hr'g Tr. at 54:15-55:8; 58:12-17; 65:15-19.)

In January of 2009, Appellant applied to the Board to retire from DEM with twenty-eight years of service credit towards retirement. (2009 Hr'g Tr. at 10:25-11:4.) Subsequently, the Board denied Appellant's request finding that she only had 26.2 years of service credit at the end of January 2009. (2009 Hr'g Tr. at 16:9-13.) Based upon the Board's computation of Appellant's service credit, Appellant would not be eligible to retire with twenty-eight years of service until December of 2010. (2009 Hr'g Tr. at 16:14-16.) Appellant disputed this computation, believing she had 27.6441 credits towards retirement and therefore, Appellant assumed that she would be eligible to retire with twenty-eight years of service credit as of June of 2009. (2009 Hr'g Tr. at 12:3-15.)

Appellant challenged the Hearing Officer's decision averring that the Hearing Officer misconstrued the issues. (Designation of R. Administrative Appeal Ex. 12.) (R.) Subsequently, a hearing was held on January 13, 2010 wherein the Board voted unanimously to affirm the decision of the Hearing Officer. (Hr'g Tr. at 22:20-23:17, Jan. 13, 2010) (2010 Hr'g Tr.) The Board thereafter issued a written notification on January 14, 2010 affirming the Hearing Officer's decision. (R. at Ex. 14.) Appellant timely filed an appeal to this Court on February 11, 2010, pursuant to § 42-35-15. In an April 26, 2012 Decision, this Court remanded the case to the Board and directed it to make findings regarding what this Court considered the central issue in the case—whether Appellant was entitled to earn a full year of service credit rather than fractional service credit for each year worked from 1990 through 1994. (Decision at 10.)

The Hearing Officer issued a second decision on October 24, 2012, specifically addressing the issue discussed above. (Second Decision, Oct. 24, 2012) (Decision After Remand.) He considered Appellant's argument that she is entitled to a full year of

service credit for each year worked regardless of the hours worked provided she worked more than twenty hours per week. *Id.* at 1-2. Specifically, Appellant argued that language contained within the ERSRI Handbook (Handbook) unambiguously states that "[i]f you are a state or municipal employee, you will receive one year of retirement credit for each year worked. You must have worked a minimum of 20 hours per week." (Decision After Remand at 2.) The Hearing Officer also considered Appellant's argument that there is no authority for the proposition that an employee must work the full amount of hours their position requires in order to be entitled to a year of service credit. *Id.* Both the Hearing Officer and the Board gave that interpretation short shrift finding instead that the above-quoted language merely describes the general eligibility criteria for being eligible to earn a year of service credit. *Id.*

The Hearing Officer began his analysis with G.L. 1956 § 36-9-25, the statute which governs the standard for service credits. (Decision After Remand at 3.) That statute requires the retirement board to "fix and determine, by appropriate rules and regulations, how much service in any year is equivalent to a year of service . . . ." Sec. 36-9-25(a). The Hearing Officer then reviewed the September 10, 2009 testimony of Karpinski. (Decision After Remand at 4-5.)

The Hearing Officer concluded that the Board had the power "to determine how much retirement service credit is to be calculated for a state employee for any given year worked." *Id.* at 5. He further found that ERSRI's policy for determining service credit was a fair and reasonable calculation, and that the interpretation advanced by the Petitioner would be "illogical and inequitable" and "likely to be financially infirm." *Id.* at 5-6.

At a hearing on December 12, 2012, the Board met to consider the Decision After Remand of the Hearing Officer with respect to whether Appellant is entitled to one year of retirement credit for each year she worked twenty-one hours per week in her thirty-five hour per week position. (2012 Hr'g Tr. at 3:20-4:8.) During their review, the Board heard arguments from both Attorney Robinson on behalf of ERSRI and Attorney Biafore on behalf of Appellant. *Id.* at 6:11-8:10; 10:11-11:10. The Board took additional testimony from Karpinski, discussed the decision, and ultimately upheld the decision of the Hearing Officer by a 13-1 vote. (2012 Hr'g Tr. at 8:13-9:21; 14:14-15:9.)

II

Standard of Review

Pursuant to § 42-35-15, "[a]ny person . . . who has exhausted all administrative remedies available to him or her within [an] agency, and who is aggrieved by a final order in a contested case is entitled to judicial review" by the Superior Court. Sec. 42-35-15(a). 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." Sec. 42-35-15(g).

The scope of a Superior Court review of an agency decision has been characterized as "an extension of the administrative process." *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 484 (R.I. 1994). As such, "judicial review is restricted to questions that the agency itself might properly entertain." *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). "In essence, 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 *Envtl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. *Arnold v. R.I. Dep't of Labor and Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "'some or any evidence supporting the agency's findings.'" *Auto Body Ass'n of R.I.*, 996 A.2d at 95 *(*quoting *Envtl. Sci. Corp.*, 621 A.2d at 208).

Furthermore, deference is due to an agency's interpretation of its own rules and regulations. *Gonzales v. Oregon*, 546 U.S. 243, 244 (2006); *Citizens Sav. Bank v. Bell*, 605 F. Supp. 1033, 1041 (D.R.I. 1985); *State v. Cluley*, 808 A.2d 1098, 1103 (R.I. 2002). Likewise, the Court will defer to an agency's interpretation of an ambiguous statute "'whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied.'" *Auto Body Ass'n of R.I.*, 996 A.2d at 97 (quoting *Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993)). The Court will defer

to an agency's interpretation so long as it is not clearly erroneous and unauthorized. *Auto Body Ass'n of R.I.*, 996 A.2d at 97.

In addition, the Court must accord greater deference to a board's decision which adopts the finding of its hearing officer, who first made fact and credibility determinations after hearing live testimony. *See Envtl. Sci. Corp.*, 621 A.2d at 207. Under the Board's two-tiered standard of review, the Court must confer this deference because "the further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the factfinder." *Id.* at 208.

III

Analysis

The Court finds that the Board's decision is not in excess of the statutory authority of the agency, clearly erroneous or arbitrary or capricious. The Board is vested with a broad grant of authority pursuant to § 36-9-25 to promulgate rules and regulations to calculate employee retirement credit. The Hearing Officer, in his Decision After Remand, asserted that the decision of ERSRI and the Board is owed deference from a reviewing court because it was interpreting an ambiguous statute which ERSRI and the Board are charged with enforcing. (Decision After Remand at 7.) However, the statute in question merely provides that the Board shall "fix and determine, by appropriate *rules and regulations*, how much service in any year is equivalent to a year of service . . . ." Sec. 36-9-25(a) (Emphasis added). Neither the Board nor counsel for the parties cited to any formal rules or regulations precisely addressing the issue. However, the central ground for disagreement between Appellant and the Board is language within the

Handbook. During the December 12, 2012 hearing before the Board, counsel for the Board, Michael Robinson, stated that the Handbook is "for guidance purposes only . . . ." (2012 Hr'g Tr. at 11:5-8.) Based on the lack of any cited regulation and Attorney Robinson's statements at the December 12, 2012 hearing, the Court finds that the Handbook itself, as well as the provision in question, are interpretive rules and therefore, the Court is free to evaluate the provision in one of three ways.

Interpretive rules are "promulgated by an administrative agency for the purposes of guidance and definition." *Great Am. Nursing Ctrs., Inc. v. Norberg*, 567 A.2d 354, 356–57 (R.I. 1989) (citing *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 141-42 (1976)). When reviewing an interpretive rule, the Court can either "(1) give force of law to the rule (2) go to the opposite extreme and substitute its judgment or (3) give some degree of authoritative weight to the rules." *Saul v. Cannon*, No. 77-1126, 1979 WL 196043, at *3 (R.I. Super. July 16, 1979) (citing 1 Davis, Administrative Law Treatise § 5.05 at 315 (1958)). An interpretive rule issued by an agency is not entitled to a presumption that it has the force of law. *See Great Am. Nursing Ctrs., Inc.*, 567 A.2d at 357. The Court is free to substitute its interpretation of the rule, even over that of the agency. *Id.* Although interpretive rules are not owed any particular deference, they are generally considered to "'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance' especially where the regulation is reasonably related to the purpose of the enabling legislation." *Saul*, 1979 WL 196043, at *3. Finally, "'the true measure of the deference due depends on the persuasive power of the interpretation, given the totality of the attendant circumstances.'" *Jasset v. R.I. Dep't of Human Servs.*,

No. C.A. PC 05-3815, 2006 WL 2169891, at *3 (R.I. Super. July 31, 2006) (quoting *Citizens Sav. Bank*, 605 F. Supp. at 1042).

The weight or nature of the Handbook has in fact already been discussed by the Court in *Hammond v. Ret. Bd. of Emps. Ret. Sys. of R.I.*, No. C.A. 99-5791, 2000 WL 1273911, at *4 (R.I. Super. July 24, 2000). The Plaintiff in *Hammond*, a preschool teacher, argued that she was entitled to one year of service credit in the retirement system for each year worked based on her reading of the Handbook. The Court found that the Handbook "is not an authoritative source of information but rather a guild to a complex Retirement System" and held that the plaintiff's reliance on the Handbook was misplaced. *Hammond*, 2000 WL 1273911, at *4. Ultimately, the court held that the decision of the Retirement Board in that case could not be controlled by the Handbook. *Id.*

Even if this Court were to afford no deference whatsoever to the Board's interpretation of the Handbook provision, it would still conclude that the ERSRI policy, as explained by Karpinski, evaluated by the Hearing Officer, and ultimately voted on by the Board is not in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error or law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Based on Karpinski's testimony, the Hearing Officer found that "a person in a 35-hour-per-week position, but who only worked half of those hours, would only receive half of the service credit during that time frame." (Decision After Remand at 4.) The Hearing Officer then reviewed the paragraph cited by

Appellant as requiring a full year of service credit, and found that the provision "provides no clarity as to what constitutes a 'year worked.'" *Id.* at 6. Although not directly stated, it is reasonable to infer that the Hearing Officer considered this phrasing ambiguous and subject to reasonable interpretation by ERSRI.

This Court finds that the Board's December 12, 2012 decision upholding the Decision After Remand of the Hearing Officer is both logical and based on substantial evidence. Specifically, the testimony of Mr. Karpinski makes abundantly clear that employees earn service credit on a proportional basis when working less than the hours required of their position. At its December 12, 2012 hearing, the Board undertook a thorough review of the Hearing Officer's Decision After Remand and allowed both sides to be heard once again. It sought further testimony and clarification from Karpinski, the individual charged with administering the fund. The Board asked meaningful questions of Karpinski to determine the implications of adopting Appellant's reasoning, and ultimately voted to uphold the Decision After Remand of the Hearing Officer by a 13-1 margin. The Court finds that the decision of the Board is based upon a reasonable interpretation of the evidence presented to it and is in no way arbitrary or capricious and therefore, accepts the Board's decision.

IV

Conclusion

For the foregoing reasons, this Court accepts the decision of the Board. Counsel shall submit the appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Nancy Langlois v. Frank T. Caprio, General Treasurer in his capacity as Chairman of the Employees' Retirement System of Rhode Island
CASE NO:	PC-2010-0909
COURT:	Providence Superior Court
DATE DECISION FILED:	May 17, 2019
JUSTICE/MAGISTRATE:	Procaccini, J.
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