STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 30, 2019)

TEAMSTERS LOCAL 251	:	
	:	
v.	:	**C.A. No. PC-2019-1016**
	:	
STATE OF RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING and STEVEN M. LABRIE	:	***consolidated with*** **C.A. No. PC-2019-1598**

DECISION

CARNES, J. The Teamsters Local 251 (Local 251) challenges a decision by the Rhode Island Department of Labor and Training (DLT or Department), after remand, finding Local 251 liable for unpaid vacation time, statutory interest and penalty, and attorneys' fees to Steven M. Labrie (Mr. Labrie). Jurisdiction is pursuant to G.L. 1956 §§ 25-3-5 and 42-35-15.

I

Facts and Travel

This Court originally issued a decision on January 12, 2017 (hereinafter Superior Court Decision of January 12, 2017) on Mr. Labrie's administrative appeal of a DLT decision (hereinafter First Decision) in which DLT found Local 251 liable for unpaid vacation time for only the year of 2013, and not for the accumulation of time for the years 2008 through 2012 which Mr. Labrie had originally sought.

A detailed recitation of the facts of this case can be found in *Labrie v. State of Rhode Island Department of Labor and Training and Teamsters Local 251,* No. PC-2015-5344, 2017 WL 235042 (R.I. Super. Jan. 12, 2017). This Court will discuss only those pertinent factual developments since its remand.

In the Superior Court Decision of January 12, 2017, this Court reversed the portion of the First Decision denying Mr. Labrie payment for unused vacation time for the years 2008 through 2012. *Labrie*, 2017 WL 235042, at *12. The Court further held that Mr. Labrie ought to have prevailed on all of his claims before the DLT, and the request for attorneys' fees was not unreasonable. *Id.* at 13. The Court granted Mr. Labrie attorneys' fees in the amount of $19,773.50. *Id.* The matter was remanded to the DLT to (i) calculate the balance of vacation pay owed to Mr. Labrie consistent with the Superior Court Decision of January 12, 2017; (ii) to calculate interest, if any, with respect to the balance of said vacation pay; and (iii) for the Hearing Officer to determine if additional attorneys' fees may be awarded pursuant to G.L. 1956 § 28-14-19(c) in connection with Mr. Labrie's successful appeal under the Administrative Procedures Act. This Court retained jurisdiction in the matter.

Subsequent to the remand, the parties filed position statements with DLT and a hearing with counsel for Local 251 and Mr. Labrie took place on September 13, 2017. On January 8, 2019 Hearing Officer Barricelli (hereinafter Hearing Officer) issued his Amended Decision[1] (hereinafter Second Decision) in which he found Local 251 liable to pay Mr. Labrie $56,540.53 for the balance of his 122.5 accrued vacation days, plus interest at the rate of twelve percent (12%) per annum from the date of nonpayment (January 1, 2014). (Second Decision at 2, 4.) As of January 8, 2019, the date of the Second Decision, the interest had accumulated to $36,028.74. *Id.* at 5. The Second Decision also ordered Local 251 to pay Mr. Labrie and the DLT a civil penalty in the amount of

[1] On October 19, 2018, the Hearing Officer issued his decision. On October 25, 2018, the attorney for Local 251 advised the Hearing Officer that the Labrie decision was based on erroneous facts related to Local 251's lack of payment of the award of vacation pay and interest and civil penalty awarded in the First Decision. In support of his claim, the attorney for Local 251 included copies of the checks issued by Local 251 to Mr. Labrie and the DLT. The October 19, 2018 decision was therefore rescinded, and a new decision issued on January 8, 2019.

$2500, with $1250 allocated to each party.[2] *Id.* at 6. Finally, the Second Decision awarded reasonable attorneys' fees to Mr. Labrie and directed counsel to submit an appropriate accounting to the Department for consideration. *Id.* at 8.

On February 19, 2019, the Hearing Officer issued a Decision Addendum Regarding Attorneys' Fees (hereinafter Decision Addendum), wherein he confirmed the total award of attorneys' fees to be $39,089.55. (Decision Addendum 3.) Local 251 then filed a timely appeal to this Court challenging both the Second Decision and the Decision Addendum as clearly erroneous in view of the reliable, probative, and substantial evidence on the record, and as arbitrary and capricious.

II

Standard of Review

The review of a decision of a state agency by this Court is governed by the Administrative Procedures Act. Section 42–35–15(g) 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:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of the statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error of law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

[2] In this case, the allocations ran to the Rhode Island Department of Labor and Training ($1250) and Steven M. Labrie ($1250).

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 agency's decision. *Newport Shipyard Inc. v. R.I. Commission 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 Association of R.I. v. State Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *R.I. Public Telecommunications Authority v. R.I. State Labor Relations Board*, 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."' *Auto Body Association of R.I.*, 996 A.2d at 97 (quoting *Pawtucket Power Associates Limited Partnership v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993)); *see also Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 99 (R.I. 2007) (citing *Arnold v. R.I. Department of Labor and Training Board 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 School Committee v. R.I. State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992) (citing § 42-35-15(g)).

III

DLT Hearing

A

Vacation Pay

The first issue on appeal is whether the Hearing Officer erred by awarding Mr. Labrie vacation pay for 122.5 days accrued between 2008 through 2013. Local 251 argues that the Hearing Officer's decision to award vacation pay for the years 2008-2011 was arbitrary, capricious, and contrary to law. The crux of Local 251's argument is that Mr. Labrie is only entitled to recover vacation pay for the year 2012 because the statute of limitations laid out in § 28-14-20 provides that "(a) [a]ll claims for wages may be filed with the director within three (3) years from the time of services rendered by an employee to his or her employer." Local 251's Br. 7. Local 251 contends that Mr. Labrie had already been paid vacation time for 2013 and that his wages for 2011 accrued when he rendered services on January 1, 2012, making his claim for vacation pay for 2008 through 2011 untimely. *Id.* at 8-9. Contrarily, Mr. Labrie argues that the Superior Court, in its Decision of January 12, 2017, had already decided that Mr. Labrie was due his vacation pay for the years 2008 through 2012 and that the purpose of remand from the Superior Court was to determine the amount of vacation pay that he was due, not to give Local 251 an opportunity to question the number of days for which Mr. Labrie should be paid.

Section 28-14-20 provides that "(a) [a]ll claims for wages may be filed with the director within three (3) years from the time of services rendered by an employee to his or her employer." Under Local 251's 2005 vacation policy, an employee could accumulate vacation time until they left the employ of Local 251. That accumulated vacation time did not turn into "wages" until an employee left Local 251's employ. More specifically, § 28-14-4(b) provides, in pertinent part, that:

> "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 . . . with all other due wages on the next regular payday for the employee."

Here, it was uncontested by the parties that Local 251 membership bound Local 251 to adjudicate Mr. Labrie's vacation pay consistent with "the 2005 vacation policy" which allowed certain Local 251 Officers to carry over their vacation time from year to year until they left employment. (Second Decision at 3.) The Hearing Officer concluded that Mr. Labrie's date of leaving employment, December 31, 2013, was the trigger for the tolling of the statute of limitations stated in § 28-14-20(a), as Mr. Labrie's accrued vacation benefits became wages at the time they were claimed and were therefore required to be paid by Local 251 no later than January 10, 2014. *Id.* The Hearing Officer further pointed to the Superior Court Decision of January 12, 2017, in which the Court stated that Mr. Labrie was entitled to vacation time payment for the unused vacation time for the years 2008 through 2012. *Id.*

In light of the determination that Mr. Labrie was entitled to such time, the Hearing Officer found the value of accrued vacation days to be $62,118.52, which was a total of 122.5 vacation days at a rate of $507.09 per day. *Id.* at 5. Local 251 had paid Mr. Labrie $5577.99 after the First Decision, making the total owed to Mr. Labrie $56,545.53. *Id.* at 6.

In light of the Hearing Officer's conclusions and findings, discussed *supra*, this Court finds that there is competent evidentiary support in the record and that the Hearing Officer did not act in an arbitrary, capricious manner contrary to law when he calculated the number of vacation days due pursuant to § 28-14-4(b). *See Unistrut Corp.*, 922 A.2d at 99. Therefore, as to the amount of vacation pay awarded to Mr. Labrie, this Court affirms the Second Decision.

B

Statutory Interest

Local 251 next argues that Mr. Labrie is not entitled to any statutory interest at this time. Section § 28-14-19 provides that "[i]nterest at the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the nonpayment to the date of payment." Local 251 contends that the date of nonpayment is the date that DLT determined that additional vacation pay was due, not January 3, 2014, and because this case has not yet rendered a final decision, as it is again before the Superior Court, no interest can be awarded at this time. Local 251's Br. 9-10. Local 251 further argues that the Department erred in awarding prejudgment interest. *Id.* Mr. Labrie, on the other hand, argues that DLT did not err and was mandated to award prejudgment interest pursuant to § 28-14-19. Mr. Labrie's Mem. 5. Mr. Labrie further argues that the date of nonpayment referenced in § 28-14-19 clearly means the next scheduled payday, as referenced in § 28-14-4(b). *Id.* Mr. Labrie left the employ of Local 251 on December 31, 2013, making his next scheduled payday January 3, 2014. *Id.* Mr. Labrie contends that the Hearing Officer was correct in calculating prejudgment interest from January 3, 2014. *Id.*

It is well settled that "an administrative agency[] is bound by the acts of the General Assembly that empower it." *Clarke v. Morsilli*, 714 A.2d 597, 600 (R.I. 1998). "In the course of performing its discrete functions . . . [an] administrative agency[] is called upon both to interpret

certain acts of the Legislature and to promulgate applicable regulations not inconsistent with its delegated authority." *Id.* (citing *Lerner v. Gill*, 463 A.2d 1352, 1358 (R.I. 1983)). However, it is the Judiciary that acts as the '"final arbiter of the validity or interpretation of statutory law' as well as of any agency regulations promulgated to administer that law." *Clarke*, 714 A.2d at 600 (quoting *DeAngelis v. Rhode Island Ethics Commission*, 656 A.2d 967, 970 (R.I. 1995)).

The Rhode Island Supreme Court has long held that '"when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)); *State v. Peterson*, 722 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 668 A.2d 1246, 1248 (R.I. 1996)) (alternatively, a court must examine an ambiguous statute in its entirety and determine '"the intent and purpose of the Legislature"'). Our Supreme Court has "repeatedly held that '[i]t is a basic tenet of administrative law that the rule-making power of an administrative body may not abrogate state law dealing with the same subject."' *Chariho Regional School District v. Gist*, 91 A.3d 783, 791 (R.I. 2014) (quoting *Reback v. Rhode Island Board of Regents for Elementary and Secondary Education*, 560 A.2d 357, 358 (R.I. 1989)); *see also Town of Smithfield v. Churchill & Banks Companies, LLC*, 924 A.2d 796, 802 (R.I. 2007) (finding that the statute trumped any administrative regulation since "the general provisions of a legislative rule must give way to specific statutory language").

Section 28-14-19(c) provides that "[i]nterest at the rate of twelve percent (12%) per annum *shall* be awarded in the order from the date of the nonpayment to the date of payment." (Emphasis added.) The use of the word "shall" contemplates something mandatory or the '"imposition of a

duty."' *Castelli v. Carcieri*, 961 A.2d 277, 284 (R.I. 2008) (quoting *Conrad v. State of Rhode Island—Medical Center—General Hospital*, 592 A.2d 858, 860 (R.I. 1991)). The use of the word "shall" is readily distinguishable from the use of the word "may," which implies an "allowance of discretion." *Castelli*, 961 A.2d at 284. Indeed, Black's Law Dictionary defines the word "shall" in a manner consistent with our prior decisions: "[S]hall. . . . Has a duty to; more broadly, is required to." Black's Law Dictionary (11th ed. 2019). In a note immediately following this definition, the editors explain that "[t]his is the mandatory sense that drafters typically intend and that courts typically uphold." *Id.*

Here, the specific language of § 28-14-19(c) is clear and unambiguous so this Court will enforce the statute according to its plain and ordinary meaning. *See Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796, 811 (R.I. 2005). It is clear, based on the plain language of the unambiguous statute, that DLT is mandated to award statutory interest. *See id.* Additionally, § 28-14-4(b) states that "any vacation pay accrued . . . shall become wages and payable in full . . . with all other due wages on the next regular payday for the employee." It is uncontested by the parties that Mr. Labrie left employment with Local 251 on December 31, 2013, and the next regular payday for Mr. Labrie would have been on January 3, 2014. Pursuant to § 28-14-4(b), the vacation pay accrued became wages that were payable in full on January 3, 2014, Mr. Labrie's next scheduled payday. Therefore, the Hearing Officer did not err in awarding statutory interest to Mr. Labrie in the amount of $36,028.74 calculated from the date of non-payment of January 3, 2014. *See Unistrut Corp.*, 922 A.2d at 99. The Court, therefore, affirms the DLT's Second Decision with respect to the award of statutory interest.

C

Civil Penalty

Next, Local 251 argues that the Hearing Officer's decision to assess a civil penalty against Local 251 for $2500 had no grounding in either the law or the specific directives of this Court and thus was in excess of authority, as the Superior Court Decision of January 12, 2017, which remanded the matter to the DLT, did not include a remand for additional penalties. Mr. Labrie conversely contends that because he was successful with having a penalty assessed in connection with the First Decision, the Hearing Officer in the Second Decision was attempting to correct the amount of civil penalty, since the initial Hearing Officer had in the First Decision predicated her award of a civil penalty based on an erroneous calculation of what vacation pay was due to Mr. Labrie.

The Court has long held that '"when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc.*, 674 A.2d at 1226). Section 28-14-19(d) states that the DLT's "order shall also require payment of a further sum as a civil penalty in an amount up to two (2) times the total wages and/or benefits found to be due . . . ." In determining the amount of the penalty to impose, the Hearing Officer "shall consider the size of the employer's business, the good faith of the employer, the gravity of the violation, the previous violations and whether or not the violation was an innocent mistake or willful." *Id.*

Given that § 28-14-19(d) is clear and unambiguous, this Court will enforce the statute according to its plain and ordinary meaning. *See Gem Plumbing & Heating Co., Inc.*, 867 A.2d at 811. Section 28-14-19 unequivocally provides that if an employee's claim for wages pursuant to § 28-14-4 is successful, the Hearing Officer is required to award to the employee both statutory

interest pursuant to § 28-14-19(c), as discussed above, and a civil penalty pursuant to § 28-14-19(d). *See* §§ 28-14-19(c) to 28-14-19(d). Here, the Hearing Officer did as such. Mr. Labrie was awarded $56,545.53 for his successful wage claim, and the civil penalty assessed against Local 251 was $2500.00, well within the statutory guidelines. *See Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340, 344 (R.I. 2004) (it is well settled that a reviewing court must give deference to an agency's interpretation of a statute as long as it is not clearly erroneous or unauthorized).

Therefore, the DLT's finding—that Local 251 was liable for a civil penalty in the amount of $2500 to be shared between the Department and Mr. Labrie— was supported by competent evidence and not arbitrary, capricious, or contrary to law. The Court thus affirms the award of the civil penalty.

D

Attorneys' Fees

Finally, Local 251 argues that the Hearing Officer erred in granting additional attorneys' fees to Mr. Labrie, as he is not entitled to attorneys' fees for the appeal to the Superior Court. Mr. Labrie contends that the Hearing Officer did not err in granting Mr. Labrie attorneys' fees for all levels of his case, both when it was at the DLT for hearing and during the first appeal to the Superior Court, since it was a continuation of the administrative hearing process.

A plaintiff may seek an award of attorneys' 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."

"The right to recover attorney's fees did not exist at common law." *Newport Yacht Management, Inc. v. Clark*, 567 A.2d 364, 366 (R.I. 1989). In Rhode Island, the courts have "'staunch[ly] adhere[d] to the 'American rule' that requires each litigant to pay its own attorney's fees absent statutory authority or contractual liability."' *Danforth v. More*, 129 A.3d 63, 72 (R.I. 2016) (quoting *Shine v. Moreau*, 119 A.3d 1, 8 (R.I. 2015)); *see also Mello v. DaLomba*, 798 A.2d 405, 410 (R.I. 2002) ("'It is well settled that attorneys' fees may not be appropriately awarded to the prevailing party absent contractual or statutory authorization."') (quoting *Insurance Company of North America v. Kayser–Roth Corp.*, 770 A.2d 403, 419 (R.I. 2001)); *Newport Yacht Management, Inc.*, 567 A.2d at 366 ("The general rule is that one may not recover such fees in the absence of statutory or contractual liability therefor.") (internal quotations omitted). Thus, it is only "in certain circumstances, the Legislature has determined that attorney's fees should be available to the prevailing litigant." *Danforth*, 129 A.3d at 72. In addition, it must be remembered that "when reviewing a statute under which a party seeks attorneys' fees, 'this [C]ourt may not imply statutory authority through judicial construction in situations in which the statutes are unequivocal and unambiguous."' *Shine*, 119 A.3d at 8 (quoting *Eleazer v. Ted Reed Thermal Inc.*, 576 A.2d 1217, 1221 (R.I. 1990)).

Here, the relevant statute—§ 28-14-19—is titled "Enforcement powers and duties of director of labor and training." In pertinent part, the statute states that the DLT "order may direct payment of reasonable attorneys' fees and costs to the complaining party." Section 28-14-19(c).

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."

The Hearing Officer, in rejecting Local 251's reliance on *Beauty Walk, LLC v Department of Labor and Training*, No. PC-13-0809, 2017 WL 235041 (R.I. Super. Jan. 12, 2017), a superior court case, awarded Mr. Labrie attorneys' fees associated with his successful appeal to the Superior Court.[3] Second Decision at 7-8. In *Beauty Walk,* the Superior Court held that the prevailing petitioner in her successful Administrative Procedures Act appeal was not entitled to attorneys' fees for services rendered on appeal. 2017 WL 235041 at *3. However, in *Beauty Walk*, unlike as in the within matter, the issue of attorneys' fees was never raised during the agency hearing. *Id.* Therefore, the DLT's decision, finding that the petitioner was entitled to premium pay while she was employed by Beauty Walk, was silent on the issue of attorneys' fees. *Id.* Notwithstanding the first *Beauty Walk* decision that was rendered on January 5, 2015—*see Beauty Walk, LLC v Department of Labor and Training*, No. PC-13-0809, 2015 WL 412873 (R.I. Super. Jan. 09, 2015)—having been concluded and final judgment having entered, the petitioner filed a motion with the Superior Court seeking interest and attorneys' fees pursuant to § 28-14-19(c). *Beauty Walk*,

[3] Superior Court cases are not binding precedent. *See Breggia v. Mortgage Electronic Registration Systems, Inc.*, 102 A.3d 636 (R.I. 2014).

2017 WL 235041 at *3. The Court denied her motion finding that § 28-14-19(c) authorized the Director of DLT or his/her designee, and not the Superior Court, to make an award of attorneys' fees. *Id.* However, if the petitioner had first raised the issue of attorneys' fees during her original DLT hearing, that issue could have been addressed as in the first *Beauty Walk* decision. *See id.*

In contrast, the issue of attorneys' fees was raised and awarded to Mr. Labrie as part of the First Decision. Upon review, the trial justice found that the Hearing Officer's reduction of the amount of attorneys' fees requested was not "rational, logical, [or] supported by substantial evidence" and therefore increased the award of attorneys' fees from $10,000.00 to $19,773.50. *See* Superior Court Decision of January 12, 2017 at *13. This case further distinguishes itself from *Beauty Walk* in that the original DLT action remained ongoing as a result of the remand from the Superior Court, instead of final judgment entering, which kept the Administrative Procedures Act hearing alive, thus giving the Hearing Officer the ability to award additional attorneys' fees pursuant to § 28-14-19(c). *See Auto Body Association of R.I.*, 996 A.2d at 95. Therefore, the Hearing Officer did not err in granting attorneys' fees for the appeal to the Superior Court.

The Hearing Officer found that attorneys' fees were reasonable with respect to the attorneys that worked for Mr. Labrie. *See* Decision Addendum 2. Two associate attorneys worked on behalf of Mr. Labrie; billing at a rate of $250 per hour. *Id.* Additionally, two partners worked on the cases: one billed at $300 per hour, and the other billed at $350 per hour. *Id.* Moreover, the firm retained by Mr. Labrie assigned two paralegals to this case, and both billed at $110 per hour. *Id.* The Hearing Officer found that the time logs submitted by counsel for Mr. Labrie were fair and reasonable and were within the range of comparable fees charged by attorneys and paralegals for issues related to this case. *Id.*

The Hearing Officer, however, did find one fee for $1012.50 for the preparation of an expert attorney affidavit in reference to fees to be "excessive" and reduced the amount to $612.50. *Id.* at 3. The Hearing Officer noted that the attorney, in preparing the affidavit at issue for Mr. Labrie's counsel, stated that, "I am in the opinion that the hourly rate charged by Attorney Penza of $350.00 is fair and reasonable and within the range of fees charged by attorneys of comparable experience within the state . . . ." *Id.* The attorney then charged $550 per hour for the preparation of the affidavit, which the Hearing Officer found excessive in light of the attorney's own comment. *Id.* The Hearing Officer reduced the amount allowed for the preparation of the affidavit to $612.50. *Id.* The Hearing Officer confirmed the remainder of the request for attorneys' fees. *Id.*

Based on the Hearing Officer's thorough review and determination that the attorneys' fees were reasonable, this Court finds that the Hearing Officer's decision—finding that appeal of the First Decision to the Superior Court was taken pursuant to the Administrative Procedures Act and awarding attorneys' fees in the amount of $39,089.55—was supported by competent evidence and not arbitrary, capricious, or contrary to law. *See Auto Body Association of R.I.*, 996 A.2d at 95. This Court thus affirms the award of attorneys' fees.

IV

Conclusion

For the reasons stated herein, this Court affirms the DLT's decision on remand, requiring that Local 251 pay Mr. Labrie $56,540.53 for the balance of his unused accrued 122.5 vacation days, plus interest at the rate of twelve percent (12%) per annum which totals $36,028.74. This Court also affirms the Department's decision to impose a civil penalty in the amount of $2500, with $1250 allocated to each party. Finally, the Court affirms the Department's award of attorneys' fees in the amount of $39,089.55. Substantial rights of Local 251 have not been prejudiced.

Counsel shall submit an appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Teamsters Local 251 v. State of Rhode Island Department of Labor and Training and Steven M. Labrie**
CASE NOS:	**PC-2019-1016 *consolidated with* PC-2019-1598**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 30, 2019**
JUSTICE/MAGISTRATE:	**Carnes, J.**
ATTORNEYS:	
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For Defendant:	**Joseph F. Penza, Jr., Esq.** **Robert J. Cosentino, Esq.**