STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 26, 2021]

EAST BAY AUTO, INC., et al.,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2018-9317**
	:	
DEPARTMENT OF BUSINESS REGULATION FOR THE STATE OF RHODE ISLAND, ELIZABETH TANNER, in her capacity as Director, and CATHERINE WARREN, in her capacity as hearing officer for the Department of Business Regulation,	:	
Defendants,	:	
	:	
ALLSTATE INSURANCE COMPANY, et al.,	:	
Interested Parties.	:	
----------		**Consolidated With**
LIBERTY MUTUAL GROUP; METROPOLITAN INSURANCE GROUP; MEMBERS OF THE PROGRESSIVE GROUP OF COMPANIES DOING BUSINESS IN RHODE ISLAND; and THE HARTFORD FINANCIAL SERVICES GROUP,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2019-0290**
	:	
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION, ELIZABETH TANNER, in her capacity as Director of the Department of Business Regulation; and CATHERINE WARREN, in her capacity as Hearing Officer for the Department of Business Regulation,	:	
Defendants,	:	
	:	
EAST BAY AUTO, INC., et al.,	:	
Interested Parties.	:	

DECISION

STERN, J. Before the Court are various administrative appeals in the above-captioned consolidated cases. In the first matter, the Plaintiffs-Appellants—a group of Rhode Island auto body shops (Shops)—request that the Court reverse and vacate the Rhode Island Department of Business Regulation's (DBR) final decision in DBR Case Nos. 2017-IN-001 through 2017-IN-017 (Final Decision), for which the Shops were the complainants. Additionally, the Shops request that the Court make certain findings as to the correct interpretation of the relevant statute, G.L. 1956 § 27-29-4.4 (Labor Rate Survey Statute). The interested parties in the first matter, various insurers who were respondents in the administrative proceeding below (Interested Party Insurers), object to the Shops' request.[1]

[1] The Interested Party Insurers are made up of various insurers and insurer groups, who submitted their briefs separately. The submitted briefs were the Nationwide Corporation Group (Nationwide) brief, the Amtrust GMACI Maiden Group (Amtrust) brief, the GEICO and National Indemnity Company (NICO) brief, the Main Street Insurance Group (Main Street) brief, and a brief submitted by the Insurers Represented by Nixon Peabody. Amtrust is made up of New South Insurance Company, Integon General Insurance Company, National General Insurance Company, Integon National Insurance Company, Integon Indemnity Corporation, Integon Preferred Insurance Company, National General Assurance Company, National General Insurance Company Online, Inc., Mic General Insurance Company, Mountain Valley Indemnity Company, Massachusetts Homeland Insurance Company, and Tower National Insurance Company. The Interested Party Insurers known collectively as GEICO are Geico Indemnity Company, Government Employees Insurance Company, Geico General Insurance Company, and Geico Casualty Company. Nixon Peabody represents twelve Interested Party Insurers: Allstate Insurance Company, American Commerce Insurance Company, AMICA Mutual Insurance Company, Liberty Mutual Group, Metropolitan Insurance Group, Ohio Mutual Group, Members of the Progressive Group of Companies doing business in Rhode Island, Providence Mutual Fire Insurance Company, Selective Insurance Group, The Hartford Financial Services Group, The Travelers Companies, Inc., and United Services Automobile Association Group (USAA). These parties entitled their brief "Response Brief Submitted by Interested Party Insurance Companies Represented by Nixon Peabody in PC-2018-9317." For brevity, the Court adopts this designation as well. In one instance, an Interested Party Insurer also asks that the Court reverse the Final Decision only as to a finding that they violated § 27-29-4.4.

In the second matter, Plaintiffs-Appellants are a group of four insurers, Liberty Mutual Group (Liberty Mutual), Metropolitan Insurance Group (Metropolitan), Members of the Progressive Group of Companies Doing Business in Rhode Island (Progressive), and The Hartford Financial Services Group (Hartford), who were respondents in the below administrative action and are also interested parties in the first matter (collectively, Plaintiff Insurers or Insurers). The Plaintiff Insurers request that the Court reverse both DBR's denial of their Motion to Dismiss (Motion to Dismiss Decision), and the determination in the Final Decision that they violated § 27-29-4.4. In both matters, Defendants-Appellees—DBR; Elizabeth Tanner, as Director of DBR; and Catherine Warren, as the Hearing Officer for DBR assigned to the proceeding (the Hearing Officer)—object to the administrative appeals and argue that both decisions should be affirmed. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

A

Statutory Requirements

In 2006, the General Assembly enacted § 27-29-4.4, requiring insurers whom are authorized to sell motor vehicle liability insurance in Rhode Island to conduct an annual labor rate survey and to report those findings to DBR. The annual survey is "an analysis of information gathered from auto body repair shops regarding the rates of labor that repair shops charge in a certain geographic area." Section 27-29-4.4(a)(1)(i). After conducting the survey, insurers must also set a prevailing auto body labor rate for each classification of auto body repair facility,[2] which

[2] There are currently two auto collision repair classifications in Rhode Island, Class A and Class B. *See* G.L. 1956 § 5-38-5(5).

is then used as a basis to determine settlement amounts for property damage claims. Section 27-29-4.4(a)(1)(ii). The current statute is clear that insurers need not rely exclusively on the results of the survey in determining the prevailing rate. Section 27-29-4.4(b).[3] After conducting the survey and setting their rates, each insurer must report its results to DBR's Insurance Division. Section 27-29-4.4(a)(5). Then, DBR must review all surveys for compliance with both the statute and its own regulations. Section 27-29-4.4(a)(7).

In accordance with § 27-29-4.4(a)(6), DBR has promulgated regulations for insurers regarding the labor rate survey and the setting of the prevailing rate. (Certification DBR R. 6, 7 (May 31, 2019) (DBR's Ex(s).).) At the start of the instant administrative actions, these regulations were found in Insurance Regulation 108 Auto Body Labor Rate Survey (Reg. 108).[4] *Id*. Ex. 7. Among other things, Reg. 108 requires insurers to conduct the survey by use of a questionnaire; to file a report about the labor rate survey to DBR by a certain deadline; and to include specific information within that report, such as the number of shops surveyed, a list of shops who failed to respond, and a list of responses that were not considered along with explanations as to why they were not considered. Reg. 108 §§ 6-8. In addition, Reg. 108 builds on the requirement of § 27-29-4.4(a)(4)(iv) that insurers include a "description of the formula or method used to calculate or determine" the prevailing rate by also requiring that if the prevailing rate is not based on the survey

[3] In a 2016 amendment, § 27-29-4.4(b) was added to codify a 2010 Rhode Island Supreme Court decision, which upheld a DBR finding that the statute as written was ambiguous as to whether insurers could use information outside of the survey results to determine the rate, but that the legislative intent was that the survey be only one factor in the insurers' calculations. *See Auto Body Association v. State Department of Business Regulation*, 996 A.2d 91 (R.I. 2010); DBR's Ex. 1 at 14.

[4] On March 17, 2017, the regulation was retitled and refiled as *Insurance Regulation*, 230-RICR-20-05-10 *Auto Body Labor Rate Survey*. *See* Final Order 3. Because the regulation that is relevant to the administrative action was titled Regulation 108—and because most parties refer to it by that name—the Court will use that designation here. *See* DBR's Ex. 7.

results, insurers must include "a complete explanation as to why it is not so based." *Id*. § 7(2)(h). Reg. 108 also requires DBR to, *inter alia*, publish the insurers' labor rates after receiving the reports and surveys from the insurers. *Id*. § 7(5).

B

Administrative Proceedings

It is undisputed that the Insurers conducted a 2016 survey and submitted their 2016 filings (the 2016 Filings)—the subject of the administrative proceeding—to DBR in a timely fashion. (DBR's Ex. 1 at 5.) DBR then posted those filings on its website, in accordance with Reg. 108 § 7(5). *Id.* at 5 n.3.

In February 2017, the Shops filed complaints with DBR against seventeen Insurers, alleging that the Insurers' 2016 Filings violated the Labor Rate Survey Statute and DBR's regulations. (DBR's Exs. 8-24.) After reviewing the complaints, DBR required each Insurer to submit a response, and each Insurer did so. (DBR's Exs. 25-42.) DBR then issued seventeen separate orders, which notified each Insurer that (1) an administrative action against them had begun, (2) there would be a Complaint Hearing, and (3) Warren had been appointed as the Hearing Officer. (DBR's Exs. 49-65.) These orders also stated that the proceeding would take place pursuant to DBR's Regulation 2 (Reg. 2),[5] and, therefore, the complainants would be solely responsible for presenting the case. *Id.* Additionally, the orders notified the Insurers that if DBR found that they violated the Labor Rate Survey Statute or DBR's regulations in their 2016 Filings, they would be subject to a fine of up to $5,000 pursuant to § 27-29-4.5. *Id.*

[5] This regulation is formally titled 230-RICR-10-00-2, however, as most parties refer to it as Regulation 2, the Court will use that name.

On May 5, 2017, the complaints were administratively consolidated to allow the Insurers to file motions to dismiss. (DBR's Ex. 2 at 2.) After that hearing, the Insurers filed four separate Motions to Dismiss the complaints, each accompanied by a supplemental brief. (DBR's Exs. 70-74.) Both the Shops and DBR's Division of Insurance opposed the motions to dismiss. (DBR's Exs. 75, 76.) On June 20, 2017, the Hearing Officer heard oral arguments, and on July 28, 2017, the Hearing Officer issued a decision denying the motions to dismiss. (DBR's Ex. 2 at 2, 12.) The Insurers then filed interlocutory appeals before the Superior Court, which were ultimately consolidated and heard together, requesting a stay of the administrative proceeding. (DBR's Ex. 81.) However, the Superior Court denied the requested stay, and the administrative proceeding continued. *Id.*

On January 19, 2018, the Shops and Insurers agreed to file stipulated facts and issues for the Hearing Officer to determine. (DBR's Ex. 1 at 2-5.) The parties agreed to a set of twenty stipulated issues, each of which applied to a stipulated list of insurers. (DBR's Ex. 83.) The Hearing Officer organized the issues into three more general issues that required determination. (DBR's Ex. 1 at 7-8.) The first issue was whether the statute or regulations "prohibit[] an insurance company from aggregating the responses from Class A and Class B designated auto body repair shops" in submitting their Labor Rate filing to DBR.[6] *Id.* at 7. The second issue was whether certain explanations the Insurers gave as to why they did not use the survey results as a basis for setting the prevailing labor rate were in compliance with both the Labor Rate Survey Statute and DBR's regulations.[7] *Id.* at 8. The final issue was whether insurers—in setting their prevailing labor

[6] Issue one applied to Insurers Amtrust, GEICO, Hartford, Liberty Mutual, Main Street, Metropolitan, NICO, Ohio Mutual, and Progressive.
[7] Issue two applied to Metropolitan, Providence Mutual, and Travelers.

rates—were able to consider factors outside the survey results, including the items listed in § 27-29-4.4(a)(3).[8] *Id.*

On August 1, 2018, Director Tanner rejected a proposed decision from the Hearing Officer and remanded the matter for additional factfinding. (DBR's Ex. 93.) The Hearing Officer submitted a second proposed decision, which Director Tanner adopted on December 12, 2018, and is the Final Decision at issue in this appeal. (DBR's Ex. 1 at 36.)

C

Final Decision

In the Final Decision, DBR reiterated that, by law, the survey results need not be the only basis of the prevailing labor rate. *Id.* at 14. DBR also held that the Labor Rate Survey Statute did not require insurers to use the survey results in setting their prevailing rates. *Id.* at 15. Because insurers are allowed to calculate their rates without using the survey, Reg. 108 § 7(2)(h) requires that a complete explanation be given if the rate is not based on the surveys. *Id.* at 14-15. DBR determined that a complete explanation "must be more than the insurer does not like the results of the auto body survey," but does not need to be "justified." *Id.* at 20. Additionally, DBR held that § 27-29-4.4(a)(3) excluded data from use in the survey, but not from use by insurers in setting the prevailing rate. *Id.* at 15-16. DBR also determined that the Labor Rate Survey Statute did not bar insurers from using data from other geographic areas in setting their rates. *Id.* at 19. Thus, DBR held that there were no requirements on what data insurers must or may use in calculating a labor rate. *Id.* at 20.[9]

[8] Issue three applied to Allstate, American Commerce, AMICA, Liberty Mutual, Nationwide, USAA, and Selective.

[9] Specifically, DBR found that "[t]he statute does not have any requirements in how the prevailing rate is set." *Id.*

DBR also held that § 27-29-4.4(a)(2) requires insurers to conduct separate and distinct rate surveys for Class A and Class B shops and to also set separate and distinct prevailing rates. *Id.* at 17. DBR found that this meant insurers must use questionnaires that require each shop to indicate its classification, and that insurers must then separately conduct an analysis and process that ultimately leads to setting a prevailing rate. *Id.* at 18. However, DBR found that the ultimate prevailing rates could be the same, so long as the insurers determined the rates separately. *Id.* To demonstrate that they conducted separate and distinct processes for each classification of repair shop, DBR held that insurers must provide separate Class A and Class B reports, each including a description of how the insurers calculated the rates. *Id.* at 21. DBR indicated that the insurers could submit the reports in the same filing, and that there were no formatting requirements. *Id*. at 22. However, DBR was clear that the insurers must address the calculations and rates separately, no matter how similar the explanations of calculations or ultimate rates were. *Id.*

Based on those determinations, DBR held that certain Insurers had violated the Labor Rate Survey Statute and Reg. 108 in various ways. *See id*. at 35-36. DBR found that Amtrust, Hartford, Liberty Mutual, Metropolitan, NICO, Ohio Mutual, and Progressive violated § 27-29-4.4(a)(2) and Reg. 108 by not having separate analyses for each class of license in their filings. *Id.* at 26.[10] DBR also found that Providence Mutual violated § 27-29-4.4(a)(4)(iv) and Reg. 108 by failing to give a compliant explanation for why it did not consider the survey results in the setting of its prevailing rate. *Id.* at 28.[11] Finally, DBR did not find that any of the Insurers violated the Labor Rate Survey Statute by relying on factors other than the survey results in setting their prevailing rates, including factors listed in § 27-29-4.4(a)(3). *Id.* at 30.

[10] DBR did not find that GEICO and Main Street committed the violation. *Id.*
[11] DBR did not find that Metropolitan and Travelers committed the violation. *Id.*

As a result of finding violations of the Labor Rate Survey Statute and Reg. 108, DBR ordered the violating Insurers to cease and desist future violations of the statute and regulations. *Id.* at 33. However, DBR did not order any Insurers to pay fines for their violations. *Id.* at 32-33.

D

Instant Litigation

Subsequently, both the Shops and the Plaintiff Insurers filed appeals to the Superior Court. By stipulation, the Interested Party Insurers intervened in the Shops' appeal as interested parties.[12] On February 26, 2019, the Courts consolidated the Shops' appeal with the Plaintiff Insurers' appeal. (Order to Consolidate.)

The Shops appeal the Final Decision whereby DBR determined that under § 27-29-4.4 and Reg. 108 there is no formula or requirement for how insurers set their prevailing rates. Specifically, the Shops dispute that insurers are not required to use results of the survey to set their prevailing rates and that insurers may use any information to set the rate, including data expressly precluded by § 27-29-4.4(a)(3) or another class's data. The Shops also appeal DBR's determination that an insurer's explanations for why survey results were not the basis for a set rate do not need to be justified, only complete. Accordingly, the Shops request that this Court reverse the Final Decision and hold that (1) insurers must consider the labor survey results as one factor in setting their prevailing labor rates; (2) there are limits for what information insurers may use in setting a prevailing labor rate, and that the information listed in § 27-29-4.4(a)(3)—as well as survey results obtained from another class—are precluded; and (3) insurers must provide "lawful explanation[s]

[12] Several Stipulations were filed and are dated as follows: January 4, 2019; January 8, 2019; January 28, 2019; January 30, 2019; and February 5, 2019.

pursuant to the intent of the statute" under Reg. 108 § (7)(2)(h) in order to justify not using the results of the survey in setting the prevailing rate. *Id.* at 22-23.

The Interested Party Insurers, in contrast, request that the Court uphold DBR's decision in those respects.[13] DBR objects to the Shops' request for reversal of the Final Decision and asks that the Court affirm the Final Decision.

The Plaintiff Insurers appeal and seek reversal of DBR's Motion to Dismiss Decision in its entirety. The Plaintiff Insurers also appeal the findings in the Final Decision that Plaintiff Insurers—Liberty Mutual, Metropolitan, Progressive, and Hartford—violated the Labor Rate Survey Statute and Reg. 108 by not filing separate analyses for each class of license. DBR objects, and requests that the Court affirm the Final Decision as to Plaintiff Insurers.

II

Standard of Review

The Administrative Procedures Act (APA), §§ 42-35-1 *et seq.*, governs this Court's review of a final administrative decision. *See Auto Body Association of Rhode Island v. State Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010). Pursuant thereto, this Court may reverse or modify the agency's 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." Section 42-35-15(g).

[13] Additionally, Interested Party Insurer NICO requests that the Court reverse DBR's finding that their 2016 filings violated the Labor Rate Survey Statute and DBR's regulations.

In reviewing the agency record, the Court may not substitute its own judgment for the agency's judgment as to the weight of evidence for questions of fact. *Interstate Navigation Company v. Division of Public Utilities & Carriers of Rhode Island*, 824 A.2d 1282, 1286 (R.I. 2003). Instead, the Court is limited to reviewing the record to determine whether legally competent evidence supports the agency's decisions. *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 484-85 (R.I. 1994). Legally competent evidence is "'more than a scintilla but less than a preponderance'" of evidence. *Reilly Electrical Contractors, Inc. v. State Department of Labor & Training ex rel. Orefice*, 46 A.3d 840, 844 (R.I. 2012) (quoting *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1012 (R.I. 2004)).

By contrast, the Court reviews questions of law *de novo*. *Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). In considering questions of law, the Court is not bound by the agency's decision, but instead may review the decision "to determine the relevant law and its applicability to the facts presented in the record." *State, Department of Environmental Management v. State, Labor Relations Board*, 799 A.2d 274, 277 (R.I. 2002).

III

Analysis

A

DBR's Decision on Plaintiff Insurers' Motions to Dismiss

Plaintiff Insurers request that the Court reverse DBR's Decision on their Motions to Dismiss because the Hearing Officer erred in four ways. First, Plaintiff Insurers assert that the Shops lacked standing to challenge Insurers' 2016 Filings because (1) § 27-29-1 prohibits private

causes of action, (2) DBR improperly delegated "its statutory enforcement duties to" the Shops, and (3) the Shops sought impermissible remedies under the Labor Rate Survey Statute and an advisory opinion. Second, Insurers argue that once DBR accepted and posted the Insurers' Rate Filings, the Shops were precluded from challenging such filings. Third and lastly, Plaintiff Insurers assert that DBR failed to make initial determinations as to DBR's jurisdiction and as to whether the Shops' complaints established reasonable cause. (Pl. Insurers' Br. at 14, 21-22.) The Court will address each argument, *in seriatim*.

1

a

Lack of Standing: § 27-29-1 Prohibition of Private Causes of Action

Plaintiff Insurers argue that the Shops did not have standing to initiate the administrative action by filing complaints because § 27-29-1 prohibits private causes of action. Section 27-29-1 ("Nothing in this chapter shall be construed to create or imply a private cause of action for a violation of this chapter."). While all parties agree that private causes of action under chapter 29 of title 27 are prohibited—including those to enforce the Labor Rate Survey Statute—Plaintiff Insurers, Interested Party Insurers, and DBR disagree as to the meaning of "a private cause of action" and whether this provision prohibits third parties from filing complaints from which DBR initiates an administrative proceeding.

Plaintiff Insurers argue that the term "private cause of action" includes the initiation of an administrative proceeding by a private party filing a complaint, and thus, the administrative process was flawed from the start because it was initiated by the Shops' private party complaints. Insurers assert that allowing the initiation of a proceeding pursuant to private party complaints poses a risk for abuse of process by financially motivated private parties. Accordingly, they request

that the Court reverse the Motion to Dismiss and further hold that § 27-29-1 prohibits anyone, other than DBR, from initiating actions prosecuting insurers for alleged lack of compliance with the provisions of § 27-29-1.

Interested Party Insurers GEICO and NICO join in the Plaintiff Insurers' arguments that private party complaints equate to private causes of action and further argue that Reg. 2 § 2.4(A)—which allows private parties to initiate administrative proceedings through a complaint—conflicts with Reg. 2 § 2.4(B)—which states that if regulations conflict with Rhode Island statutes, the statutes must apply. GEICO and NICO assert that because § 27-29-1 prohibits private causes of action, the statute governs, and the Shops' Complaints are barred.

DBR's Decision denying the Motions to Dismiss held that § 27-29-1's prohibition on private causes of action does not extend to complaints that private parties file with DBR and for which the private parties will receive no direct remedy. DBR's interpretation of § 27-29-1 is that a private cause of action involves a private party suing to enforce a legal claim, and thus, private party complaints—filed pursuant to Reg. 2 § 2.4(A)—are not private causes of action because DBR ultimately adjudicates the case, determines if there has been a violation, and imposes remedies that are limited to those pursuant to statute, such as fines and revocation of licenses, not direct remedies to complainants. (DBR's Ex. 2 at 5-6.)

In interpreting a statute "that the General Assembly empowered the agency to enforce," the agency's factual findings are accorded great deference, *Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340, 344 (R.I. 2004), yet "questions of law—including statutory interpretation—are reviewed *de novo*[,]" *Iselin*, 943 A.2d at 1049 (citing *In re Advisory Opinion to the Governor*, 732 A.2d 55, 60 (R.I. 1999)). Where a statute may be "'unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its

enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized.'" *Power Test Realty Company Limited Partnership v. Coit*, 134 A.3d 1213, 1219 (R.I. 2016) (quoting *Duffy v. Powell*, 18 A.3d 487, 490 (R.I. 2011)). "This is true even when other reasonable constructions of the statute are possible." *McConaghy*, 849 A.2d at 345 (citing *Pawtucket Power Associates Limited Partnership v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993)).

Our Legislature has empowered DBR to regulate § 27-29-1. *See* § 42-14-1. Our Supreme Court has firmly established that an ambiguous statute is one in which "the language of the statute is susceptible of more than one meaning." *Auto Body Association*, 996 A.2d at 97 (reviewing DBR's interpretation of the Labor Rate Survey Statute).

In *Stebbins v. Wells*, 818 A.2d 711 (R.I. 2003), the Court determined that a private cause of action is akin to "a private lawsuit for damages." *Stebbins*, 818 A.2d at 716. Similarly, in *Great American E & S Insurance Co. v. End Zone Pub & Grill of Narragansett, Inc.*, 45 A.3d 571 (R.I. 2012), in considering that the statute provided no private cause of action, the Court held that the statute defendant relied upon did not allow defendant to recover compensatory relief and only set forth a procedure for DBR to follow upon receiving a complaint from a private party, such as defendant. *Great American*, 45 A.2d at 575.

The Court finds that the language in question—"private cause of action"—is reasonably susceptible to more than one meaning, including DBR's interpretation that it only bars entirely private lawsuits where the complainant seeks legal remedies. *See Auto Body Association*, 996 A.2d at 97. Because DBR's interpretation is reasonable, it is not clearly erroneous, and thus, this Court must give "weight and deference" to DBR's statutory interpretation. *McConaghy*, 840 A.2d at 344. Although this deference is not entirely controlling, the Court finds no compelling reason to

invalidate DBR's interpretation. *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445-46 (R.I. 2008) ("The interpretation of a statute by the administering agency is not controlling, but it is entitled to great weight."). Thus, the Court affirms DBR's interpretation of § 27-29-1, that the statute does not bar private parties from filing complaints with DBR from which DBR initiates further administrative proceedings.

Although the Shops' initial complaints to DBR initiated an administrative action, the Shops did not seek a direct remedy.[14] Accordingly, the proceedings before DBR were not a prohibited private cause of action. Based on the foregoing, the Court declines to reverse DBR's Decision on the Motions to Dismiss on the grounds that the Shops lacked standing due to the language that § 27-29-1 prohibits private causes of action.

b

Lack of Standing: The Complaint Hearing and DBR's Ability to Delegate its Prosecutorial Authority Under §§ 27-29-1 *et seq.*

In their Motion to Dismiss at the agency level and again in their appeal, Plaintiff Insurers raise the issue that the agency proceeding was procedurally flawed because DBR improperly allowed the Shops to prosecute the action. (DBR's Ex. 70 at 6; Pl. Insurers' Br. 20 (Dec. 20, 2019)). This begs the question as to whether DBR may, while enforcing the requirements of the Labor Rate Survey Statute, delegate its statutorily granted authority to maintain a proceeding against a party alleged to be in violation of said statute.

An agency's authority is limited to that which is statutorily granted to it. *See McConaghy*, 849 A.2d at 344-45. Furthermore, '"[a]n agency cannot modify the statutory provisions under which it acquired power, unless such an intent is clearly expressed in the statute."' *Id.* at 345

[14] In the parties' joint stipulation of issues for the administrative proceeding, it was clear that "Complainants seek prospective relief, not retrospective relief or damages." (DBR's Ex. 83 at 2.)

(quoting *Little v. Conflict of Interest Commission*, 121 R.I. 232, 236, 397 A.2d 884, 886 (1979)). Understanding an agency's statutory authority and limits thereof is a matter of statutory interpretation. *See id.*

Nevertheless, "'[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). In doing so, "'our ultimate goal is to give effect to the General Assembly's intent.'" *Mancini v. City of Providence*, 155 A.3d 159, 162 (R.I. 2017) (quoting *DeMarco v. Travelers Insurance Co.*, 26 A.3d 585, 616 (R.I. 2011)). When taking the "'plain meaning approach . . . it is entirely proper for us to look to the sense and meaning fairly deducible from the context.'" *Id.* (quoting *National Refrigeration, Inc. v. Capital Properties, Inc.*, 88 A.3d 1150, 1156 (R.I. 2014)); *see also Heritage Healthcare Services, Inc. v. Marques*, 14 A.3d 932, 938 (R.I. 2011).

Collectively, chapter 29 of title 27 vests authority in the insurance commissioner (Commissioner)[15] alone to charge and maintain proceedings against "any person engaged in the business of insurance in this state" reasonably believed to be utilizing "any unfair method of competition or any unfair or deceptive act or practice[.]" Section 27-29-5. Under certain circumstances, the Commissioner shall allow persons to intervene in the proceeding, yet nothing in §§ 27-29-1, *et seq.* allows the Commissioner to divest itself from the proceeding and vest its

[15] "Commissioner" is defined in § 27-29-2(1) as the "director of the department of business regulation[.]"

authority in a complainant or any other party, for that matter, to maintain the action against the person charged.

Rather, the Commissioner "shall issue and serve upon the [alleged violating party] a statement of the charges . . . and a notice of a hearing[,]" where that party presents its case to the Commissioner,[16] and whereby the Commissioner—not any other person or party—may take oaths and engage in a wide array of activities to catalyze fact-finding and the expose of evidence.[17] Section 27-29-5. When that alleged violating party is determined by the Commissioner to have engaged in "any unfair method of competition or any unfair or deceptive act or practice" and is ordered to cease and desist such activity, only that party may obtain judicial review of the Commissioner's order. Section 27-29-7.

The statute does not provide that any party aggrieved by the Commissioner's order may seek judicial review, because the General Assembly did not contemplate that the statute would provide a forum for adversary parties. The intent of the Legislature is clear in the plain language of the statute, as the Legislature provided a means and scope of another person's ability to intervene in the proceeding. Section 27-29-5(b). Specifically, "[u]pon good cause shown the insurance commissioner shall permit any person to intervene, appear, and be heard at the hearing by counsel or in person." *Id.* If there are no limits placed upon how and to what extent a

[16] Pursuant to § 27-29-5(b), when a complaint has been levied against an entity within DBR's jurisdiction, "the [entity] shall have an opportunity to be heard in person and by counsel, and to show cause why an order should not be made by the insurance commissioner requiring the person to cease and desist from the acts, methods, or practices so complained of."

[17] Pursuant to § 27-29-5(c), at the in-person-hearing, "[t]he insurance commissioner . . . may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which are relevant to the inquiry."

complainant may be involved in a proceeding pursuant to § 27-29-5 to enforce the requirements set forth in § 27-29-4.4, this very provision would be rendered meaningless.

In comparison, certain statutes expressly provide a means for a person to directly petition DBR for relief. For instance, pursuant to § 42-35-8, "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner." Section 42-35-8(a). The person seeking a declaration may even pursue judicial review of the agency's decision. Section 42-35-8(d). Section 42-35-8 was the very avenue taken by the Auto Body Association of Rhode Island in *Auto Body Association*, 996 A.2d at 93-94, whereby the Association sought a declaration of the meaning of § 27-29-4.4 and further appealed DBR's decision to the Superior Court. However, the nature of the proceedings under § 27-29-5 does not provide an avenue for a person to sit in a prosecuting capacity as § 42-35-8 enables a person to prosecute a declaratory action. Rather, § 27-29-5 allows, only upon good cause shown, a person to intervene, appear, and be heard while the Commissioner "issue[s] and serve[s]" its licensee with notice of a hearing, facilitates a show cause hearing for the licensee, and the Commissioner herself "may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of [evidence] relevant to the inquiry." Section 27-29-5. Noteworthy is that § 27-29-10 refers to the "powers vested in the insurance commissioner by this chapter" as these prosecutorial powers to enforce the provisions of chapter 29 of title 27 are not granted to all but are statutorily confined to the Commissioner.

Furthermore, pursuant to the APA, a "contested case" is "a proceeding, . . . in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an

agency after an opportunity for hearing." Section 42-35-1(5). The very nature of a "contested case" at the agency level includes the agency—specifically, the person assigned per statute—in its prosecuting capacity, enforcing the regulations assigned to it per statute and "a specific party" who falls under the regulations assigned to that agency.[18]

Our Supreme Court has expressed an agency's adjudicatory authority—and limits thereto—as an endowment of "quasi-judicial powers[.]" *See In re Denisewich*, 643 A.2d 1194, 1197 (R.I. 1994). "[T]he term 'quasi-judicial' suggests that an administrative body will be making a determination that will have an impact on a party's rights, that it will conduct a hearing, consider evidence, and reach a decision relative to the issues raised in the complaint." *Ims v. Town of Portsmouth*, 32 A.3d 914, 929 (R.I. 2011) (citing *Hillside Associates v. Stravato*, 642 A.2d 664, 667-68 (R.I. 1994) (considering the quasi-judicial functions vested in administrative agencies)). This quasi-judicial power does not fully extend to all judicial functions.

Pursuant to Reg. 2, when a person or entity files a complaint with DBR, and it has investigated the matter, DBR may proceed in one of three ways: (1) find no reasonable cause and do nothing; (2) find reasonable cause and schedule the matter as a "Departmental Hearing," *i.e.*, DBR prosecutes the matter itself; or (3) find reasonable cause and schedule the matter as a Complaint Hearing, *i.e.*, the complainant prosecutes the matter on behalf of DBR. *See* Reg. 2

[18] The Commonwealth of Massachusetts's Manual For Conducting Administrative Adjudicatory Proceedings provides an illustrative example of the difference between a formal adjudicatory proceeding and an informal proceeding. Office of the Attorney General of the Commonwealth of Massachusetts, *Manual for Conducting Administrative Adjudicatory Proceedings* 6-7 (Robert L. Quinan, Jr. ed., 2012). The former takes place between the board and licensee, whereby the board acts in both a prosecuting capacity and an adjudicating capacity, yet with different persons filling those roles. *Id.* at 6. Although a complainant may intervene in a formal matter, at no point does the intervenor take the place of the board in its prosecuting capacity. *Id.* An informal proceeding, on the other hand, is where the complainant and licensee appear before a board member in attempt to resolve the matter informally, before a licensee moves to a formal adjudicatory hearing. *Id.* at 7.

§§ 2.4, 2.5. Here, DBR determined that the Shops' complaint established reasonable cause and scheduled the matter as a Complaint Hearing. However, the statute is clear and unambiguous; DBR may not delegate to a third-party complainant its power to prosecute a matter arising from chapter 29 of title 27.

In the instant case, it was not the Commissioner that maintained the action, sought witnesses, or introduced evidence. Despite the Legislature's clear delegation of authority to DBR alone—specifically, to the Commissioner—to prosecute matters related to unfair competition and practices, the Shops prosecuted the case before the DBR Hearing Officer, introduced evidence, and acted—in all respects—as the Commissioner's surrogate in the matter. DBR's decision to allow the Shops to prosecute the matter was an improper grant of authority under § 27-29-5. While DBR may allow, upon good cause shown, third parties to intervene, appear, or be heard, and may allow—or even require—third parties to produce evidence, DBR may not delegate to a third-party complainant its power to prosecute a matter arising under chapter 29 of title 27.

The current structure of Reg. 2's Complaint Hearing, whereby the complainant steps in the shoes of the Commissioner, at least in so far as it relates to hearing violations under § 27-29-1, contravenes the General Assembly's intent to vest quasi-judicial authority in DBR.[19] As such, the proceedings at the administrative level were procedurally flawed and in violation of the processes allowed by statute.

[19] Pursuant to § 42-14-17, the DBR's director "may promulgate such rules and regulations as are necessary and proper to carry out the duties assigned to him or her by this title or any other provision of law." In addition, Reg. 2 provides that: "[t]hese rules . . . are adopted for the purpose of assisting in carrying out the functions, powers and duties assigned to the Department of Business Regulation [] whether in effect prior to or subsequent to the adoption of these [r]ules." Reg. 2 § 2.2(A). Rules that are "necessary and proper" to carry out one's duties are not synonymous with rules that will "assist[] in carrying out" one's duties. *See Gonzales v. Raich*, 545 U.S. 1, 65 (2005) (considering the meaning of "necessary and proper").

Nevertheless, pursuant to § 42-35-15(g), the court may "remand the case for further proceedings, or reverse or modify the agency decision, only if *substantial rights* of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions meet one of the six criteria listed in that section." *Kent County Memorial Hospital v. State*, No. C.A. 05-2089, 2006 WL 241493, at *8 (R.I. Super. Jan. 31, 2006) (emphasis in original). The pertinent criteria in § 42-35-15(g) is that the findings, inferences, conclusions, or decisions were "[m]ade upon unlawful procedure." Section 42-35-15(g)(3). However, "[a] remand of the instant case is not necessary since it would not serve to clarify any issues." *Greenberg v. Town of Narragansett Zoning & Platting Board of Review*, No. C.A. 97-0420, 2000 WL 1910043, at *4 (R.I. Super. Dec. 11, 2000) (citing *Roger Williams College v. Gallison*, 572 A.2d 61, 63 (R.I. 1990)).

Although this Court has determined that DBR improperly delegated its duty to prosecute the insurance companies by having the Shops prosecute the matter, the Court need not remand the case to DBR for an additional hearing because DBR's Final Decision did not prejudice the Insurance Companies' *substantial rights*. It is clear to this Court that if DBR were to prosecute the matter in a new hearing, the Shops would have the ability to intervene, appear and be heard, as well as play a large role in the proceeding. In addition, because the Legislature empowered DBR to call witnesses and solicit evidence from third parties, the Shops would have the ability to present the same evidence that they presented to the Hearing Officer at the Complaint Hearing at any subsequent hearing. As a result, DBR's delegation of its duty to prosecute did not prejudice the Insurance Companies' *substantial rights*. *See* § 42-35-15(g).

Thus, the Court holds that DBR improperly delegated its authority to prosecute the instant matter to the Shops; however, that delegation did not prejudice the Insurance Companies'

substantial rights. While the Shops had standing, upon good cause shown to intervene, appear, and be heard, they did not have the authority to stand in a prosecutorial capacity in the administrative proceedings.

c

Lack of Standing: Impermissible Remedies Under the Labor Rate Survey Statute & Advisory Opinion

Finally, Plaintiff Insurers, joined by Interested Party Insurers GEICO and NICO, argue that the Hearing Officer erred in denying their Motions to Dismiss because in their initial complaints the Shops sought remedies not available under § 27-29-4.4 and, thus, lacked standing. Plaintiff Insurers further argue that the Shops' requested prospective relief amounted to an impermissible advisory opinion—that is, determinations of how future insurer filings must be done in order to comply with the statute and regulation. By contrast, DBR contends that its charging orders, which set forth the only potential remedies, govern, not the Shops' complaints. (DBR's Ex. 2 at 7 ("It is the Orders that set forth the potential violations and remedies to be heard at hearing and not the various complaints from which the Department's actions were taken.").)

The Shops' complaints sought four remedies. (DBR's Exs. 8-24.) Each complaint sought sanctions against the Insurers, as well as a declaration that the 2016 survey filings were invalid. *Id.* Additionally, the Shops requested that DBR order the Insurers to determine a proper labor rate "based on correctly acquired data," and some requested that DBR order the Insurers to properly compile a survey. *Id.* Lastly, each complaint requested that the Shops be paid specific labor rates during the pendency of the administrative action. *Id.* During the course of the administrative proceedings, both the Shops and Insurers agreed that the Shops sought "prospective relief, not retrospective relief or damages." (DBR's Ex. 83 at 1.)

The charging orders that DBR issued to the Insurers after receipt of the Shops' complaints, which commenced the administrative proceedings, listed entirely different remedies from those in the Shops' complaints. The orders stated that if DBR found that the Insurers violated the Labor Rate Survey Statute or Reg. 108, they would be subject to a fine of up to $5,000 pursuant to § 27-29-4.5, or the administrative penalties available in § 42-14-16. *See* § 27-29-4.5 (providing that violators of § 27-29-4.4 may be fined up to five thousand dollars); § 42-14-16 (enumerating various penalties DBR may use when it finds any violation, including revocation or suspension of a license, fines, orders to cease, and orders to comply in the future). Those were the only potential penalties listed in DBR's orders to the Insurers.

The Court finds that in the context of administrative proceedings held before DBR regarding insurer filings under § 27-29-4.4, the remedies DBR identifies in its charging orders or those which are allowed under the applicable statute(s) control, not those which private-party complainants set forth in their complaints. As DBR notes, there are numerous policy considerations which underscore that finding and serve the intent of Reg. 2 § 2.4(A). Pursuant to Reg. 2 § 2.4(A), any person may file private party complaints. Given that under this regulation anyone, including people without legal training, may file complaints, these complaints might identify important potential violations but may incorrectly identify or describe the appropriate laws, regulations, or remedies. Accordingly, allowing the remedies and law found within a complaint to be binding on the remainder of the administrative proceeding "would hamstring the Department's abilities to ascertain violations of law based on the actual substance of the actions described in a complaint." (DBR's Ex. 2 at 7 n.7.) Based on the foregoing, the Court declines to reverse DBR's Decision on these grounds.

2

DBR's Review and Posting of 2016 Filings

Next, Plaintiff Insurers contend that the denial of the Motion to Dismiss was improper because DBR's posting of the 2016 Filings constituted its acceptance of them and should have precluded administrative proceedings on alleged violations in those filings. Specifically, Plaintiff Insurers argue that, by posting the 2016 Filings, DBR implied it had reviewed them as § 27-29-4.4(a)(7) required and found them to be in compliance with the Labor Rate Survey Statute and Reg. 108.[20] Consequently, Plaintiff Insurers request that the Court reverse the denial of their Motions to Dismiss and specifically hold that no one may challenge the compliance of filings under § 27-29-4.4 and Reg. 108 after DBR posted those filings.[21]

DBR, equating Plaintiff Insurers' argument to estoppel, determined that nothing in Bulletin 2016-4 stated that DBR's posting of the 2016 Filings barred future challenges to those filings or that DBR "made any affirmative representations to [Plaintiff Insurers] that any challenges to the labor rates were precluded by the acceptance of the labor rates survey." (DBR's Ex. 2 at 8-9.) Additionally, DBR contends that it could not—by posting the rates—"waive or modify" the

[20] This posting is entitled Bulletin 2016-4.

[21] Interested Party Insurers GEICO and NICO join this argument, contending that because DBR is statutorily required to review insurers' filings for compliance before posting—and because posting of the 2016 Filings occurred without enforcement actions initiated by DBR towards the insurers—GEICO and NICO relied upon that posting as affirmation that they had not violated the Labor Rate Survey Statute or Reg. 108. Thus, they argue that the posting of the 2016 Filings constitutes acceptance of those filings and should bar complaints about those filings. At the administrative action level, GEICO and NICO also specifically argued that DBR's acceptance and posting of the rates, and the Insurers' reliance on that acceptance and posting, meant that DBR was estopped from bringing further administrative actions concerning those filings. *See* DBR's Ex. 2 at 8. The briefs for this appeal do not claim equitable estoppel and so the Court does not address this argument. *See Roe v. Gelineau*, 794 A.2d 476, 482 n.6 (R.I. 2002) (noting that "[i]ssues that the appellant fails to brief are waived on appeal").

applicable law, and, thus, challenges to the filings under the Labor Rate Survey Statute are permissible even after DBR has posted the labor rates.

As set forth *supra*, "a court reviewing the agency's interpretation of the statute as applied to a particular factual situation must accord that interpretation 'weight and deference as long as that construction is not clearly erroneous or unauthorized.'" *McConaghy*, 849 A.2d at 344 (quoting *In re Lallo*, 768 A.2d 921, 926 (R.I. 2001)).

Pursuant to § 27-29-4.4(a)(7) DBR is statutorily required to review the surveys and filings insurers submit to them. Section 27-29-4.4(a)(7) ("[DBR] shall review all surveys submitted for compliance with this section and any rules and regulations promulgated by the department."). Additionally, under Reg. 108, DBR must publish the labor rates "within a reasonable time after receipt and compilation of the surveys submitted by insurers." Reg. 108 § 7(5). Nevertheless, nothing in § 27-29-4.4 or Reg. 108 states that the act of posting a filing precludes later challenges to or administrative proceedings relative to that filing.

Here, the Court finds that DBR's interpretation of the statute as applied to the particular factual situation, whereby DBR's review of and posting of the 2016 Filings did not preclude later administrative actions or challenges, was not clearly erroneous. After reviewing the 2016 Filings for compliance as statutorily prescribed, the Shops' complaints may reasonably have alerted DBR to potential violations within the Insurers' filings. Furthermore, DBR appropriately found that due to the lack of any representations made by DBR to the effect that the published 2016 Filings were accepted without recourse, DBR was not estopped from accepting and investigating complaints and pursuing administrative actions against insurers it reasonably believed violated the provisions of § 27-29-4.4.

As a result, the Court affirms DBR's Decision relative to this issue.

3

DBR's Adherence to Procedural Requirements of Reg. 2;
Initial Findings of Jurisdiction and Reasonable Cause

Finally, Plaintiff Insurers argue that DBR should have dismissed the Shops' complaints because DBR did not follow procedural regulations of the complaint process. Namely, the Plaintiff Insurers contend that DBR's regulations require DBR to find both jurisdiction and reasonable cause before continuing with a complaint proceeding, which it failed to do in the instant action.

In relevant part, Reg. 2 § 2.4 states that:

> "[a] complaint may be made by any Person against any Licensee or any Person who is required to be licensed but is not licensed by the Department. The Department or the applicable Division thereof shall make an initial determination whether or not the complaint is within the Department's jurisdiction. If no jurisdiction exists, the Department shall notify the complainant in writing. If jurisdiction exists, the Department shall conduct whatever investigation it deems appropriate, including forwarding a copy of the complaint to the Respondent."

After finding a complaint is within its jurisdiction, Reg. 2 § 2.4 provides that:

> "the Department shall take one (1) of the following actions:
> "1. If the Department determines that the complaint fails to establish Reasonable Cause, the Department shall take no action on the complaint and advise the complainant and Respondent in writing of the determination; or
> "2. If the Department determines that the complaint establishes Reasonable Cause, the Department shall take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant thereto."

Plaintiff Insurers assert that DBR failed to make "an initial determination" that the Shops' complaints were within their jurisdiction as required by Reg. 2 § 2.4, because DBR made no formal and explicit finding of jurisdiction before forwarding the Shops' complaints to the insurers.

Similarly, Plaintiff Insurers also argue that because DBR did not formally and explicitly find that the Shops' complaints established reasonable cause, DBR did not follow Reg. 2 § 2.4.[22]

DBR held that it made internal decisions that it had jurisdiction over the complaints and that those complaints established reasonable cause. (DRB's Ex. 2, at 4-5.) DBR reasoned that it has jurisdiction over its own licensees, *i.e.*, the insurance companies, and the complaints concerned those very licensees, and after reviewing the complaints, it determined that there "exist[ed] a set [of] facts . . . that would cause a reasonably prudent person to believe that a violation of law or regulation occurred." *Id.* at 4. According to DBR's interpretation of Reg. 2 § 2.4, taking the next appropriate action—which the regulation contemplates might take the form of forwarding complaints to respondents—demonstrated that DBR found jurisdiction existed, even absent a formal and communicated finding. *Id.* Similarly, Plaintiff Insurers' receipt of notice of a complaint hearing infers that DBR made a finding of reasonable cause because, otherwise, pursuant to Reg. 2 § 2.4(1), the complaint would have been closed. *Id.* at 4.

Here, the Court finds DBR's interpretation of Reg. 2 § 2.4, as not requiring DBR to make formal and explicit findings of jurisdiction, not clearly erroneous. Rather, the regulation's language is clear: if DBR finds jurisdiction, it may proceed. Conversely, if DBR does not find jurisdiction, it must send written notice to the complainant. Because proceeding with the action is only available when DBR has found jurisdiction, its forwarding of the complaints to the Insurers was sufficient to demonstrate that DBR found it had jurisdiction.

Similarly, Reg. 2 § 2.4 does not require DBR to make a formal and explicit finding of reasonable cause. Again, the regulation's language is clear: if DBR finds reasonable cause, it

[22] Interested Party Insurers GEICO and NICO join in Plaintiff Insurers' arguments.

continues the enforcement action process. Conversely, if DBR does not find reasonable cause, it takes no further actions and notifies both complainants and respondents in writing. Again, because continuing the process is only available if DBR has determined that reasonable cause existed, DBR's sending of orders to the Insurers notifying them of further actions, including a complaint hearing, was adequate to demonstrate that it had established reasonable cause pursuant to Reg. 2 § 2.4.[23] Accordingly, the Court declines to reverse the Motion to Dismiss Decision on these grounds, as it finds that DBR did not violate the procedures set forth in Reg. 2 § 2.4.[24]

[23] Although the Court has determined that the language in Reg. 2 § 2.4 is clear, and, thus, interprets it literally, in the event that it is ambiguous the outcome is the same. The same deferential standard of review applies to an agency's interpretation of its own regulations promulgated pursuant to a statute as does to its interpretation of a statute it is empowered to enforce. *See State v. Swindell*, 895 A.2d 100, 105 (R.I. 2006) (applying the deferential standard of review to the Department of Health's interpretation of its own regulation on blood alcohol testing instruments.) Here, DBR's interpretation is reasonable, and, thus, the Court would be deferential to its interpretation even if the regulation's language were ambiguous.

[24] Plaintiff Insurers also argue that as a matter of law DBR could not have properly established reasonable cause because it had already reviewed and published the insurer's 2016 Filings. Plaintiff Insurers contend that this review and posting demonstrated that DBR found that the insurers had complied with § 27-29-4.4 and Reg. 108 in their 2016 Filings and, therefore, no reasonable cause for a violation existed. However, the Court finds that DBR was able to find that the Shops' complaints established reasonable cause even after having reviewed and posted the Insurers' 2016 Filings. As defined in Reg. 2 § 2.3(A)(11), reasonable cause is "a set of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which would induce a reasonably intelligent and prudent person to believe that a violation(s) of law, rule, or regulation has occurred." As discussed above, this Court declines to hold that because DBR reviewed filings before posting them, it may not investigate complaints about those filings. *See supra* § III(A)(2). Thus, even after a review of the 2016 Filings, DBR may reasonably have been alerted to potential violations within the 2016 Filings by a complaint and thus found reasonable cause to continue the proceeding.

B

Final Decision

The Plaintiff Insurers also appeal the Final Decision. Plaintiff Insurers appeal DBR's determination that they violated the statute and regulations by not filing separate analyses for each class of license and ask that the Court reverse those holdings.[25] DBR opposes Plaintiff Insurers' and Interested Party Insurer NICO's efforts to reverse various aspects of the Final Decision given the Court's deference to DBR's findings of fact and interpretation of statutes it has been empowered to enforce "as applied to a particular factual situation." (DBR's Mem. Opp'n 4-5.)

Specifically, the Plaintiff Insurers, joined by Interested Party Insurer NICO, appeal the Hearing Officer's determination in the Final Decision that they violated the Labor Rate Survey Statute and Reg. 108 "by failing to file a separate analysis for each class of license in setting their prevailing rates." (DBR's Ex. 1 at 26.) In its Final Decision, DBR determined that:

> "There is no prohibition in submitting one (1) report that addresses the separate and distinct labor rate survey and describes separately the setting of the separate and distinct prevailing rate. No matter how the report is formatted, it must separately address Class A and B prevailing rates and state their calculations separately. It may be that the reasons are very similar, but the calculation for Class A and B prevailing rates must be separate and if surveys are not a basis for either rate the complete explanation—even if very similar to each other—must be given separately for each Class." (DBR's Ex. 1 at 22.)

Accordingly, DBR held that each of the Plaintiff Insurers and NICO violated § 27-29-4.4(a)(2) and §§ 10.7(B)(6) and (7) because they did not "clearly delineate the responses received for each

[25] Interested Party Insurers object to the Shops' arguments and ask that the Court uphold the Final Decision's determinations as to the requirements of the labor rate surveys. Also, Interested Party Insurer NICO appeals the Final Decision's finding that its 2016 Filings violated the Labor Rate Survey Statute and Reg. 108, and requests that the Court reverse this determination.

class [of auto body shop] and the bases thereto for its analysis [of their rates]." *Id.* Ex. 1 at 23. The Plaintiff Insurers appeal this determination and ask the Court to find that the Final Decision is erroneous for two reasons: (1) the Hearing Officer erroneously evaluated this issue *sua sponte* because it was outside the range of stipulated issues and neither DBR nor the Shops raised it as a concern; and (2) the Plaintiff Insurers thoroughly explained how they reached their rates and how those rate filings met the statutory and regulatory requirements.

This Court must first address the Plaintiff Insurers' argument that the Hearing Officer erroneously, *sua sponte,* evaluated whether the Plaintiff Insurers' rate filings summaries violated the statutory and regulatory requirements. Although the Court is mindful of the deference due to the Hearing Officer of an administrative body, the Court agrees with Plaintiff Insurers' contention that the Hearing Officer erred in deciding *sua sponte* to pass on the issue of whether the Plaintiff Insurers violated the Labor Rate Survey Statute and DBR's Regulations. "This is so because [this Court] adhere[s] to the principle that, 'when a trial justice considers and rules on an issue *sua sponte*, the parties must be afforded notice of the issue and allowed an opportunity to present evidence and argue against it.'" *Bruce Brayman Builders, Inc. v. Lamphere*, 109 A.3d 395, 398 (R.I. 2015) (quoting *Catucci v. Pacheco*, 866 A.2d 509, 515 (R.I. 2005) (holding that a trial justice erred in adding new party defendants *sua sponte* at the close of the plaintiff's case)); *see also D'Alessio v. State*, 101 A.3d 1270, 1278 (R.I. 2014) (stating that the "hearing justice incorrectly, and *sua sponte*, passed on the issue of ineffective assistance of [the] applicant's trial counsel," where neither party had raised that issue); *Lomastro v. Iacovelli*, 56 A.3d 92, 96 (R.I. 2012) (discerning an abuse of discretion in the trial justice's failure to give the parties an opportunity to address the issue of whether or not a motion to amend should be granted); *Providence Journal*

Company v. Convention Center Authority, 824 A.2d 1246, 1248 (R.I. 2003) (stating that the trial justice erred in *sua sponte* ordering additional redactions that the defendant had never requested).

For example, in *Bruce Brayman Builders,* our Supreme Court held that the trial justice abused their discretion by "denying [the plaintiff's] declaratory judgment action on the basis of [the plaintiff's] purported failure to exhaust its administrative remedies[,]" which the trial justice raised *sua sponte*. 109 A.3d at 396. On appeal, the plaintiff argued that the trial justice erred in denying it declaratory relief because the parties did not have a meaningful opportunity to brief or argue whether the administrative exhaustion doctrine applied to the case. *See id.* Our Supreme Court reasoned that the trial justice abused his discretion because the plaintiff did not have the opportunity to object to the applicability of the administrative exhaustion doctrine or submit its arguments to the trial court. *See id.* at 398-99; *see also Santos v. Santos*, 568 A.2d 1010, 1011 (R.I. 1990) (holding: "[I]t must be recognized that both parties appeared before the trial justice that day with the expectation of arguing the merits of a motion to decrease. Rather, the husband found himself in the precarious situation of defending against what amounted to an entirely unexpected determination on the part of the trial justice to increase the support paid by the husband. We find this to be substantially unfair to the husband. Such a determination without notice and an opportunity for a meaningful hearing cannot be allowed to stand.").

Here, the Court finds *Bruce Brayman Builders* to be both instructive and controlling. Plaintiff Insurers argue that the Hearing Officer erred because the issue of whether the Plaintiff Insurers violated the Labor Rate Survey Statute and DBR's Regulations was not a stipulated issue in the case, and the Hearing Officer, *sua sponte,* raised the issue, which left the Plaintiff Insurers caught off-guard and unable to argue their positions. While the Hearing Officer may raise issues *sua sponte* when there is evidence that "the substance of the argument relied upon by the [hearing

officer] was raised before him and could be considered by [the] [c]ourt," *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 813 (R.I. 2000), this Court cannot find any facts that show the Plaintiff Insurers were on notice of the issue. *Cf. King v. Huntress, Inc.*, 94 A.3d 467, 484 (R.I. 2014) (holding that, while an objection to a particular jury instruction "was not a model of proper syntax," there was nonetheless "enough meat on the bone to have put the trial justice on notice as to what [the] defendant contended was the nature of [the trial justice's] alleged error") (internal quotation marks omitted).

This Court finds that the Hearing Officer abused her discretion by raising this issue *sua sponte*. Therefore, the Court need not address the substantive documentation and summaries of Plaintiff Insurers' rates because the issue was not properly before the Hearing Officer. Thus, the Court reverses DBR's determination that Plaintiff Insurers violated the Labor Rate Survey Statute and DBR's Regulations by not providing an adequate description of the calculations and information each Insurer used to reach their labor rates.

IV

Conclusion

Based on the foregoing, the instant administrative appeal is granted, in part, and denied, in part. The Motion to Dismiss Decision is affirmed. The Final Decision is affirmed, in part, and reversed, in part. Counsel shall prepare and submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	East Bay Auto, Inc., et al. v. Department of Business Regulation for the State of Rhode Island, et al.
CASE NO:	PC-2018-9317; PC-2019-0290
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 26, 2021
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	Peter J. Petrarca, Esq.; Jeffrey S. Brenner, Esq.
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