STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 31, 2013)

KAREN McANINCH, Business Agent USAW-RI and USAW-RI	:	
v.	:	**C.A. No. PC 2010-5899**
	:	**C.A. No. PC 2010-5950**
STATE OF RHODE ISLAND, DEPARTMENT OF LABOR AND TRAINING, DIVISION OF LABOR STANDARDS, by and through its Director, SANDRA M. POWELL, and PROVIDENCE PUBLIC LIBRARY	:	**(Consolidated)**

DECISION

TAFT-CARTER, J. This administrative appeal concerns the payment of vacation time after the termination of employment. Karen McAninch (McAninch) and USAW-RI (collectively Appellants) seek judicial review of a decision of the State of Rhode Island Department of Labor and Training (DLT). The decision of the DLT denied the Appellants' request for vacation wages after their employment was terminated at the Providence Public Library (PPL and, together with DLT, Appellees). Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

McAninch is the Business Agent of USAW-RI. (Decision at 1.) As USAW-RI's Business Agent, she represents all employees covered by the PPL's Collective Bargaining Agreement (CBA). (Decision at 2.) USAW-RI is a labor organization representing the individuals formerly employed by the PPL. (Decision at 2.) The PPL's vacation policy for

union employees is governed by the CBA, and the vacation policy for non-union employees is included in an Employee Manual. (Decision at 2.)

Union employee vacation leave policies are set forth in the CBA. The CBA distinguishes between two vacation leave policies, which have been referred to as the old policy and the new policy. The new vacation policy allows full- and part-time employees to accrue vacation time on a monthly basis beginning with the first full month of employment. The policy, in pertinent part states:

> "Full time and part time employees who work at least 20 hours per week will accrue vacation time beginning with the first full month of employment. Part time employees (20 hours) will begin accruing vacation time retroactive to July 1, 2006, or date of hire, whichever is later.
>
> Accrued vacation leave may be taken after 6 full months of employment. Accruals will be in accordance with the following schedule:
>
> Professional: 1.83 days per month, or 22 per year.
>
> Specialist/Paraprofessionals: 1.375 days per month or 16.5 per year for the first five years, and 1.83 days per month or 22 days per year thereafter.
>
> Clerical: 1 days per month or 12 days per year for the first 5 years, 1.375 days per month or 16.5 days per year for the second 5 years, and 1.83 days per month or 22 days per year thereafter.
>
> Part time employees will accrue vacation on a pro-rated basis.
>
> Temporary employees (who work less than 3 months) will not accrue vacation time.
>
> Vacation time must be used before July 1 of each year, however, employees may carry 10 days of unused leave into the following year. Vacation time carried over must be used before September 30 of the year into which it is carried. However if an employee has worked less than 9 months by September 30, he or she may carry unused leave to his or her anniversary date."

(Appellees' Ex. D, CBA, 17-18). In contrast to the new monthly accrual policy, under the old policy employees receive their entire allotment of vacation days on July 1. In pertinent part, the old policy states:

> "Employees hired prior to the monthly accrual system will continue to receive their entire allotment of vacation days on July 1. This leave will be assumed to have been earned in the previous year, and will be prorated to reflect the portion of the year actually worked. All accrued vacation leave must be used before June 30 of the fiscal year in which it is received; however 10 days may be carried over into the next year. Leave carried over must be used before September 30 of the year into which it is carried."

(Appellees' Ex. D, 18.) The vacation policy for non-union employees is set forth in the Employee Manual. It states in relevant part:

> "All full-time employees are eligible for paid vacations. Vacation time accrues beginning with the first full month of employment. However, employees must complete one year of continuous service, measured from the date of hire, before taking vacation time. Continuous service is defined as service that is uninterrupted by termination of employment and subsequent rehire. Vacation time must be taken within one fiscal year (July 1 to June 30). Accrued vacation time may not be carried over into the next fiscal year.
>
> . . .
>
> On termination of employment, the employee is paid all accrued but unused vacation at the employee's base rate of pay at the time of termination."

(Appellants' Ex. 7, Employee Manual, 9.)

On June 30, 2009, one day before the end of the PPL's fiscal year, the PPL terminated the employment of thirty-eight union and eight non-union employees. (Decision at 2.) On July 9, 2009, McAninch filed a complaint against the PPL with the Department's Division of Labor

Standards on behalf of the former employees.[1] (Decision at 1.) The complaint alleged that the employees had accrued vacation pay that was due at the time of their separation, totaling $149,482.82, and that these wages were not paid. Specifically, McAninch alleged that each employee accrued vacation leave for having worked the prior fiscal year and that there was no requirement for employees to be employed on July 1 to be awarded vacation leave. (Decision at 1.) The PPL alleged that the employees were not paid because they were terminated June 30, 2009, which occurred before the vacation time accrued on July 1, 2009.

On July 8, 2010, a hearing was conducted by hearing officer Valentino D. Lombardi, Esq. (hearing officer) (Tr. at 2.) At the hearing, McAninch testified that, as USAW-RI's Business Agent, she participated in the negotiations which developed the current CBA's terms, including Section XIV, pertaining to vacation leave. (Tr. at 14-17.) Under the old system of vacation leave policy, each employee received vacation leave commencing on July 1 for having worked the prior fiscal year, and that no language exists in the CBA indicating that an employee must be present on July 1 to be awarded vacation leave. (Tr. at 17-18.) McAninch acknowledged, however, that the union had not filed a grievance with respect to the application of the disputed vacation leave policy. (Tr. at 30.)

Deborah Furia, a former union PPL employee, testified that she had been employed at the PPL for nine years prior to her separation. (Tr. at 49.) She stated that because of the PPL's actions, she received no vacation pay for the fiscal year worked from July 1, 2008 to June 30, 2009. (Tr. at 53.) Ms. Furia believed that she was entitled to vacation days she earned during the course of the fiscal year in which she was separated. Ms. Furia conceded, however, that she

[1] Although the original complaint included the thirty-eight union and eight non-union employees, this appeal concerns only the thirty-eight union employees.

was unaware of any PPL employee being paid vacation pay in the fiscal year in which it was earned. (Tr. at 62.)

Maria Melvin, a former non-union employee, stated that she was separated from employment on June 30, 2009. Upon her separation, she was not paid the vacation wages which she believed were earned during the 2008 fiscal year. (Tr. at 69-70.) Under cross-examination, she agreed that the PPL never paid vacation wages other than what had been awarded on July 1 to terminated employees. Employees who separated in late June of any given year were not paid for any vacation that would have been awarded just days later. (Tr. at 72-74.)

Dan Austin testified that, as the former Assistant Director and Human Resources Manager at the PPL, he was familiar with the vacation leave provisions contained in the CBA and the Employee Manual. (Tr. at 77-78.) He testified that under the old vacation leave policy which applied to the former employees, no person was eligible for vacation pay earned during the prior fiscal year if he or she was not employed on July 1 of the following fiscal year. (Tr. at 78-79.) Mr. Austin recounted instances when employees left in late June without receiving a vacation pay award, as well as other instances when employees left in July and were awarded a substantial amount of vacation pay that had just recently been awarded on July 1. (Tr. at 83-84.) He agreed that this was the way the system "balanced out." (Tr. at 84.) Under cross-examination, Mr. Austin acknowledged an action by a non-union employee in which the employee was allowed to use certain vacation time prior to July 1. Mr. Austin noted, however, that this action was an isolated exception for a non-union employee. He reiterated that a person must be "on [the] payroll" on July 1 to be entitled to a vacation award. (Tr. at 89-93.)

Finally, Leticia Tonka testified that, as a Senior Human Resources Administrator, she prepared a vacation policy guide that she used to differentiate the old and new vacation polices in

response to employee inquiries. (Tr. at 100.) Under cross-examination, Ms. Tonka acknowledged that her policy guide was based on her understanding of the PPL's vacation leave policy. It was not a part of the CBA or Employee Manual. (Tr. at 103.)

All of the documents submitted by the parties, including the relevant portions of the CBA and Employee Manual, were marked as full exhibits. The parties submitted post-hearing memoranda and reply memoranda.

The hearing officer issued a written decision on September 9, 2010. The decision addressed three preliminary issues: (1) whether the DLT had jurisdiction to rule on this matter when there was a CBA and Employee Handbook establishing the method for calculating vacation wages; (2) whether a union Business Agent could file a complaint on behalf of both union and non-union members; and (3) whether the employees were required to follow the grievance procedure set forth in the CBA and Employee Handbook in claiming their vacation wages. (Decision at 5-7.)

With respect to these issues, the hearing officer held that the DLT had jurisdiction to hear matters regarding unpaid wages upon separation from employment. He also held that the union Business Agent could include non-union members in a claim, pursuant to G.L. 1956 § 28-14-19(c). Additionally, the hearing officer held that with respect to the election of remedies issue, the employees were not required to follow the grievance procedure set forth in the CBA and Employee Handbook as long as they were employed for one year. (Decision at 5-7.)

The hearing officer next addressed the central issue of whether the former employees were entitled to vacation wages from their last year of employment. Based on a review of all the testimony and documentary evidence presented, the hearing officer made certain findings of fact. (Decision at 7.) Specifically, the hearing officer found that Appellants were employed by the

PPL. Some of the Appellants were members of the Collective Bargaining Unit and subject to the terms of the CBA, while others were non-union employees subject to the vacation policy contained in the Employee Handbook. (Decision at 7.)

With respect to the former union employees, the hearing officer found that the CBA governed. Relying on the language of Art. XIV, he concluded that "a union employee does not accrue vacation until the date it is able to be awarded." (Decision at 7.) He further held that "[o]n July 1 of any given year, a union employee accrues and is awarded the number of vacation hours or days, which he or she earned during the past fiscal year ending June 30." (Decision at 7.) Finally, he determined that "[i]f the individual is not employed on July 1, no vacation is accrued and awarded." (Decision at 7.)

The hearing officer found the Employee Handbook was controlling with respect to non-union employees. He noted that pursuant to the Employee Manual, "vacation time must be taken within one fiscal year (July 1 to June 30) and that accrued vacation may not be carried over into the next fiscal year." (Decision at 7.) He concluded that pursuant to the Employee Handbook, "[t]he non-union employee does not accrue vacation until the date it is able to be awarded. On July 1 of any given year, a non-union employee accrues and is awarded, the number of vacation hours or days, he or she earned during the past fiscal year." (Decision at 7.) He further determined that "[i]f the individual is not employed on July 1, no vacation is accrued and awarded." (Decision at 7.) The hearing officer dismissed the Appellants' claims finding that "[t]he petitioners were not employed on July 1, 2009 having been separated on June 30, 2009 and as such are not entitled to any vacation leave or wages." (Decision at 8.)

The hearing officer's decision was mailed to Appellants on September 9, 2010. Appellants filed identical timely appeals in this Superior Court: No. PC 2010-5899 on October

12, 2010 and No. PC 10-5950 on October 13, 2010. These matters were consolidated on December 20, 2010, per Order, Fortunato, J. Both complaints contested the same DLT decision from September 9, 2010. On October 5, 2011, this Court issued a written Decision dismissing Appellants' appeals for lack of subject matter jurisdiction. Appellants subsequently appealed to the Rhode Island Supreme Court, which vacated this Court's dismissal on April 19, 2013, and remanded the case for further proceedings. This Court's Decision after remand follows.

II

Standard of Review

The Rhode Island Administrative Procedures Act, G.L. 1956 §§ 42-35-1 et seq., governs this Court's appellate review of an agency decision. See Rossi v. Employees' Ret. Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). Pursuant to § 42-35-15, "[a]ny person, . . . who has exhausted all administrative remedies available to him or her within [an] agency, and who is aggrieved by a final order in a contested case is entitled to judicial review" by this Court. Sec. 42-35-15. This Court "may affirm the decision of the agency or remand the case for further proceedings." Sec. 42-35-15(g). This Court may reverse or modify an agency's decision if:

> "[S]ubstantial 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."

Sec. 42-35-15(g).

This Court's review of an agency decision is, in essence, "an extension of the administrative process." R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994). On review, this Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). This Court will defer to an agency's factual determinations so long as they are supported by legally competent evidence of record. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007).

Unlike an agency's findings of fact, an agency's determinations of law "are not binding on the reviewing court." Pawtucket Transfer Operations, L.L.C. v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008). Instead, this Court reviews the agency's interpretation de novo "to determine what the law is and to determine its applicability to the facts." Id. This Court will afford deference to an agency's reasonable construction of an ambiguous statute whose administration and enforcement have been entrusted to the agency. Rossi, 895 A.2d at 113 (quoting Arnold v. R.I. Dep't. of Labor and Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003)). No deference is warranted, however, when the statute is not susceptible of multiple reasonable meanings. See Unitrust Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 191 (R.I. 2007). Similarly, an agency's interpretation "will not be considered controlling by reviewing courts if the construction is clearly erroneous or unauthorized." See Flather v. Norberg, 119 R.I. 276, 283 n.3, 277 A.2d 225, 229 (1977).

III

Analysis

Appellants argue that the decision of the hearing officer, denying the request for vacation wages, was affected by error of law and clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record. They raise two principal arguments in support of this appeal: (1) state law requires payment for vacation time both "accrued" and "awarded," and (2) the DLT erroneously determined that PPL employees accrue and are awarded vacation time on the same day—July 1.

A

State Law

Payment of wages, including payment of accrued or awarded vacation pay upon an employee's separation from an employer, is governed by the Rhode Island Payment of Wages Act, G.L. 1956 §§ 28-14-1 et seq. The statute defines "wages" as "all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the amount." Sec. 28-14-1(4). A provision of the statute establishes the fact that although vacation leave and pay are not mandatory under Rhode Island law, an employer is required to pay an employee upon separation any "accrued" or "awarded" vacation pay, assuming that employee completed at least one year of service. Sec. 28-14-4(b). That section provides:

> "Whenever an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee."

Sec. § 28-14-4(b). The statute makes clear that the distribution of vacation pay is subject to the terms of any collective bargaining agreement or established company policy because vacation pay is "accrued or awarded by collective bargaining, written or verbal company policy . . . ." Id. (Emphasis added.)

The separated employees are therefore entitled to "accrued" or "awarded" vacation pay because they were terminated after one year of service, but receipt is conditioned on the vacation policy set forth in the CBA and Employee Manual. See Gazarkiewicz v. Town of Kingsford Heights, Indiana, 359 F.3d 933, 948-49 (7th Cir. 2004) (applying Indiana Wage Payment Statute and noting that the right to vacation pay accrues upon labor in absence of an employer policy, but if the employer has a policy, that policy governs when an employee's right accrues); Damon Corp. v. Estes, 750 N.E.2d 891, 892-93 (Ind. Ct. App. 2001) (holding that an employee was not entitled to accrued vacation time where company policy stated that employees do not earn vacation pay each year until his/her anniversary date and plaintiff was terminated three months prior to his anniversary date). Here, the hearing officer determined that union and non-union employees receive vacation pay pursuant to the CBA and Employee Manual, respectively. (Decision at 7.) His conclusion that § 28-14-4(b) entitles a separated employee with at least one year of service to "accrued" or "awarded" vacation pay, guided by the vacation policy established in the CBA and Employee Manual, is not affected by error of law.

B

The Department's Determination

Appellants argue that the hearing officer erred by not distinguishing between "accrued" and "awarded" vacation pay in his decision. Further, they contend that the hearing officer's finding that vacation pay "accrued and was awarded on July 1" is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellants construe § 28-14-4(b) and the CBA to mean that even employees subject to the PPL's old vacation leave policy are entitled to vacation pay they allegedly "accrued" throughout the fiscal year.

Our Supreme Court has instructed that courts must "'interpret [] statute[s] literally and must give the words of the statute their plain and ordinary meanings.'" Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). "'This is particularly true where the Legislature has not defined or qualified the words used within the statute.'" Id. (quoting D'Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)). Further, "The interpretation of provisions in a collective bargaining agreement is a question of law." 51A C.J.S. Labor Relations § 363. "Courts interpret collective bargaining agreements as they do other contracts, applying general principles or rules of contractual interpretation." Id. Much like statutory interpretation, courts construing contractual language must view the contract in its entirety and give its language its "plain, ordinary and usual meaning." Id. (quoting Rubery v. Downing Corp., 760 A.2d 945, 947 (R.I. 2000) (internal quotation marks omitted)).

The statute, the CBA, and the Employee Manual do not define the terms "accrued" or "awarded." See Damon Corp., 750 N.E.2d at 893 (analyzing the language of the governing vacation policy to determine when vacation time "accrued"). In Rhode Island, it is well settled that "'[w]hen . . . a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary.'" Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 535 (R.I. 2012) (quoting Planned Environments Mgmt. Corp. v. Robert, 966 A.2d 117, 121 (R.I. 2009)). Black's Law Dictionary defines "accrue" as "1. [t]o come into existence as an enforceable claim or right; to arise . . . . 2. To accumulate periodically . . . ." Black's Law Dictionary, 22 (8th ed. 2004). "Award" is defined as "[t]o grant by formal process or by judicial decree . . . ." Id. at 147. The second definition of accrue, "to accumulate periodically," is the relevant definition. To resolve whether vacation pay accrued throughout the fiscal year, as

Appellants contend, or on July 1, as the hearing officer determined, the Court turns to the vacation policy itself. See Damon Corp., 750 N.E.2d at 893.

The CBA distinguishes between two vacation leave policies. See Facts and Travel, supra. Under the new policy, "[f]ull time and part time employees who work at least 20 hours per week [] accrue vacation time beginning with the first full month of employment." (Appellees' Ex. D, CBA, 17). Simply stated, the new policy is a monthly accrual policy.

Unlike the PPL employees accruing vacation on a monthly basis, employees subject to the old policy "receive their entire allotment of vacation days on July 1." See Gazarkiewicz, 359 F.3d at 948-49; Damon Corp., 750 N.E.2d at 892-93. Thus, employees do not accrue vacation time until it may be awarded in its entirety on July 1. See id. With respect to "accrued" vacation under the old policy, the CBA states that "[a]ll accrued vacation leave must be used before June 30 of the fiscal year in which it is received, however 10 days may be carried over into the next year." (Appellees' Ex. D, 18). This language further indicates that accrued vacation leave refers only to that vacation leave awarded on July 1 of the current fiscal year, absent ten days that may carry over into the following year. Thus, while the PPL was required to pay the separated PPL employees for unused accrued vacation leave awarded on July 1, 2008 for the 2008-2009 fiscal year, the PPL had no obligation under the CBA to pay the separated employees for vacation leave for the 2009-2010 fiscal year because they were not employed on July 1, 2009.

Mr. Austin's testimony confirmed that vacation time accrued and was awarded on July 1, stating that an individual must be "on [the] payroll" on July 1 to be entitled to vacation pay. (Tr. at 93.) He explained that under the new policy, employees accrued vacation on a monthly basis. (Tr. at 78-79.) He further confirmed that employees did not accrue any vacation under the old system for the following fiscal year until July 1 of that year. (Tr. at 79.) Thus, this Court finds

that the hearing officer's conclusion that PPL employees subject to the old vacation leave policy accrued and were awarded their vacation leave on July 1, is not affected by error of law, and is supported by the plain language of the CBA and Mr. Austin's testimony of record.

The hearing officer's decision is supported further by the language of the Employee Manual, which this Court considers to the extent its provisions do not conflict with the CBA. See Elkouri & Elkouri, How Arbitration Works, 203 (2008 supplement) ("Company handbooks and personnel manuals typically contain provisions that supplement, but do not conflict with, contract language . . . ."). The Employee Manual states that "[a]ccrued vacation time may not be carried over into the next fiscal year." (Appellants' Ex. 7, Employee Manual.) This sentence demonstrates that "accrued" vacation leave refers to vacation leave accrued and awarded on July 1 of the current fiscal year. Thus, an individual is not entitled to any "accrued" vacation time until it is awarded on July 1. Again, Appellants were not employed on July 1, 2009 and therefore not entitled to an award of vacation pay for the 2009-2010 fiscal year.

Ultimately, this Court finds that the hearing officer's decision was not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. His construction and application of the CBA and Employee Manual were reasonable and supported by the testimony of Mr. Austin.

IV

Conclusion

After reviewing the hearing officer's decision and the parties' respective briefs in support of this administrative appeal, this Court affirms the decision of the DLT. The hearing officer's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on

the whole record, and substantial rights of the Appellants have not been prejudiced. Counsel shall prepare an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Karen McAninch v. State of Rhode Island, Department of Labor and Training, et al.**
CASE NO:	**C.A. No. PC 2010-5899** **C.A. No. PC 2010-5950** **(Consolidated)**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 31, 2013**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Carly Beauvais Iafrate, Esq.**
For Defendant:	**Mary Ellen McQueeney-Lally, Esq.** **Joseph D. Whelan, Esq.** **Meghan E. Siket, Esq.**