STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 18, 2015)

RHODE ISLAND COUNCIL 94, AFSCME AFL-CIO	:	
v.	:	**C.A. No. PC-2011-6147**
RHODE ISLAND BOARD OF GOVERNORS OF HIGHER EDUCATION, UNIVERSITY OF RHODE ISLAND, STATE OF RHODE ISLAND DEPARTMENT OF ADMINISTRATION, by and through its Director Michael DiBiase	:	

DECISION

MATOS, J. Rhode Island Council 94, AFSCME AFL-CIO (Council 94), petitions this Court for a declaratory judgment as to the rights and powers afforded to the Rhode Island Board of Governors of Higher Education (the Board)[1] by the governing statutory scheme[2] relative to the

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[1] Through the Education Act of 1981, the legislature established a Board of Governors (the Board) for higher education and a Board of Regents for Elementary and Secondary Education. G.L. 1956 §§ 16-59-1 (establishing the Board) and 16-60-1 (establishing the Board of Regents for Elementary and Secondary Education). Upon establishing the respective boards, the legislature explained its purpose and motivations as follows:

> "The quality of education that we all seek and desire within the elementary and secondary and the higher education sectors require that each have a management structure to provide the necessary attention to each of these areas by qualified professionals and dedicated and knowledgeable citizens.
> "Therefore, the general assembly, recognizing its constitutional responsibility to secure for the people the advantages and opportunities of education, finds and declares it to be in the best interest of all our citizens to establish a board of governors for higher education." P.L. 1981, ch. 32 (g)-(h).

establishment of classified and non-classified campus police positions. Specifically, Council 94 contends that the Board is barred from designating any supervisory campus police position as non-classified that has not been specifically exempted by the legislature. Jurisdiction in this instant matter is pursuant to G.L. 1956 §§ 9-33-1, et seq.

I

Facts and Travel

Campus police have existed at Rhode Island's public institutions, including the University of Rhode Island (URI), since 1972 pursuant to § 16-52-2. P.L. 1972, ch. 280, § 1. Section 16-52-2 states that "[t]he board of governors for higher education may appoint one or more persons who may act as police officers upon the property and highways of state colleges and universities subject to the control of the board." It is uncontested that prior to 2004, all campus police positions at URI including Campus Police Officer, Campus Police Lieutenant, and Campus Police Captain operated under the Local 528 collective bargaining agreement (CBA) represented by Council 94, and existed as classified positions, subject to the terms and conditions of the State Merit System (the Merit System).

The Board was provided with broad powers relative to the advancement, operation, and management of higher education in the state of Rhode Island. See § 16-59-4 (setting forth the broad "[p]owers and duties of [the] council [of governors]"). Although the legislature has since abolished the Board, instituting in its stead the Board of Education, these two bodies of government are, for the purposes herein, functionally equivalent. P.L. 2012, ch. 241, art. 4, § 3 (stating "there is created a board of education . . . to be vested with all the powers and duties currently vested in the board of governors for higher education"). As such, within this Decision, the term "the Board" shall refer to both entities, the Board of Governors and the Board of Education, as a singular, continuous entity.

[2] The governing statutory scheme primarily consists of G.L. 1956 §§ 36-4-1 et seq. (Merit System), 16-59-4 (Powers and duties of board), 16-59-22 (Applicability of merit system—Teacher certification—List of positions transferable to classified service), and 16-52-2 (Appointment of campus police), discussed in further detail infra.

The Merit System is set forth by §§ 36-4-1, et seq. and seeks to "guarantee to all citizens a fair and reasonable opportunity for public service, to establish conditions of service which will attract officers and employees of character and capacity, and to increase the efficiency of the governmental departments and agencies by the improvements of methods of personnel administration." Sec. 36-3-2. There are three categories of positions: classified, unclassified, and non-classified. Public positions that are subject to the Merit System are considered either "classified" or "unclassified." See § 36-4-1. "Employee positions within the State of Rhode Island, unless specifically exempted, are covered by the merit system[.]" Am. Ass'n of Univ. Professors, Univ. of R.I. Chapter v. Bd. of Regents for Educ., 118 R.I. 216, 217 n.1, 373 A.2d 168, 169 n.1 (1977).

The Merit System accordingly outlines compensation for "classified" positions and provides for both competitive and non-competitive "classified" positions. Secs. 36-4-4, 36-4-5, 36-5-9. Control of the Merit System rests with the Division of Personnel Administration of the Department of Administration (DOA).[3] Secs. 36-3-4, 36-3-5. The Merit System permits the DOA to promulgate the rules necessary to carry out its statutory provisions, but forbids it to "change [the] conditions of employment [where] covered by a collective bargaining agreement." Sec. 36-4-8(b). "Unclassified" positions are those that are designated as such by legislative act in § 36-4-2, and are also within the control of the DOA. See § 36-4-16.2 ("It is the duty of the department of administration to maintain a pay plan for unclassified employees of the state[.]")

The final category, non-classified positions, "are those which are not covered by the merit system such as employees of the Legislature (excluded by § 36-4-2.1) and teachers and research employees of the state colleges (excluded by § 16-31-12)." Gibbons v. State, 694 A.2d

[3] For this reason, the DOA is a named Defendant in the instant matter.

664, 665 (R.I. 1997) (internal citations omitted). Section 16-31-12 has since been repealed, the relevant statute excluding certain employees of the state colleges being § 16-59-22.

In 1988, with respect to the Merit System, the legislature enacted § 16-59-22, titled "Applicability of merit system—Teacher certification—List of positions transferable to classified service." This statute addresses the status of state employees working at URI, and it explicitly declares faculty positions, presidents, vice presidents, deans, assistant deans, student employees—and administrative, instructional, research, and secretarial employees—to possess non-classified status. The statute is silent as to whether campus police positions are classified or non-classified.

In 2004, the Board created two new campus police positions titled "University Police Lieutenant" and "University Police Sergeant."[4] These positions are non-classified, and, therefore, exist outside the Merit System and operate under Local 2877, as opposed to Local 528 CBA. Such differences created considerable discord within the Campus Police Department at URI.

As such, in 2008, Council 94 filed an unfair labor practice charge with the State Labor Relations Board asserting that the Board improperly moved the position of police lieutenant from Local 528 to Local 2877 by filling the University Police Lieutenant position in lieu of the Campus Police Lieutenant position. Additionally, Council 94 filed a grievance with respect to the University Police Sergeant position. Not long after filing, Council 94 requested these complaints be held in abeyance, where they remain to this day.

In 2009, the Board filed suit in Superior Court, seeking determination "whether, under state law, campus police officers at the University of Rhode Island, Rhode Island College and

[4] Council 94 disputes whether these positions are truly new or simply represent a reworking and renaming of campus police positions removed from the classified service.

Community College of Rhode Island are nonclassified employees falling under the authority of the Board of Governors or whether they're part of the classified service." Rhode Island Board of Governors v. Rhode Island Council 94, No. PC-09-4731, March 2, 2011, 3, Vogel, J (Council 94 I). This Court, Vogel, J., in a bench decision, reasoned that it did "not see anything in the statutory scheme that would suggest a legislative intent to remove [campus police officers] from classified service[.]" Id. at 14. Thus, the Court found that the legislature did not intend to provide the Board "with the ability to remove campus police officers from classified service." Id.

That decision, however, did not address the status of the University Police Lieutenant and University Police Sergeant positions. Thus, going forward, the Board interpreted the declaration as extending only to those positions already "in [the] classified service of the state subject to the merit system law." Id.

The Board maintains that its creation of the non-classified positions of University Police Lieutenant and University Police Sergeant is statutorily permitted under § 16-52-2, which provides for the appointment of campus police, and not in violation of the Merit System. This belief has prompted Council 94 to file the instant action for Declaratory Judgment that the Board does not have the power to create such non-classified positions. In response, the Board, along with URI, objects to Council 94's motion. Additionally, there are two groups of intervenors. The first group comprises five officers who hold non-classified Campus Police positions at URI: Michael Chalek, Michael Donahue, Richard Moniz, Kenneth Olson, and Erica Vieira (Chalek Intervenors). The Chalek Intervenors object, along with the Board, to Council 94's motion. Further, one of the Chalek Intervenors, Erica Vieira, has moved, separately, for summary judgment because she claims that her position, as a University Sergeant, is a new position and,

hence, is not a classified position.

The second group of intervenors comprises a group of Campus Police Officers whose positions are classified: Frank Pascale, Mark Chearino, John Carey, Thomas Gugliemetti, Michael Novak, and Debra Sheldon (Pascale Intervenors). They intervene in this action in support of Council 94's motion, and further request a declaration that the non-classified University Police positions be deemed void. Finally, the DOA, as a named Defendant, takes a neutral stance in response to the motion. The Board and the Chalek Intervenors have also raised various affirmative defenses in response to Council 94's motion for declaratory judgment, including election of remedies, waiver, and laches.

II

Standard of Review

The Uniform Declaratory Judgments Act (the UDJA) vests the Superior Court with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1 (emphasis added); see also Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009). Because the UDJA exists to "'facilitate the termination of controversies,'" it has been liberally construed in an effort to realize that goal. Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999)). However, a declaratory judgment petition is justiciable only where "appropriate facts [are] established from which the trial justice may determine that an actual controversy . . . exists." Millett v. Hoisting Eng'rs Licensing Div. of Dep't of Labor, 119 R.I. 285, 292, 377 A.2d 229, 234 (1977). A plaintiff must therefore suffer both some "injury in fact, economic or otherwise" and maintain a "legal hypothesis [by] which [it is] entitle[d] . . . to real and articulable relief." Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) (citations omitted).

The Board and the Chalek Intervenors argue, in part, that Council 94's motion for declaratory judgment is barred by waiver because it negotiated contractual benefits for the non-classified University Police positions that it is now challenging. The Chalek Intervenors further argue that doctrine of laches applies because Council 94 has slept on its rights by failing to raise the instant issues until 2011, when it was aware of non-classified positions when they were filled in 2005 and 2006. The arguments have been made in response to Council 94's request for declaratory judgment, but have not been submitted by way of dispositive motions. That may be, in part, because, as this Court finds, infra, they present factual disputes that require an evidentiary hearing.

If the Board and the Chalek Intervenors prevail on their defenses, Council 94's request for declaratory relief could arguably be rendered moot. Our Supreme Court has cautioned against the issuance of advisory opinions under the guise of a UDJA. See Sullivan v. Chafee 703 A.2d 748 (R.I. 1997); Morris v. D'Amario, 416 A.2d 137, 139 (R.I. 1980). However, the Court has also approved of the "issuance of declaratory relief . . . only when [the] question(s) presented, although technically moot or deficient in some other respect, involve[d] issues of extreme public importance, which are capable of repetition but which evade review." Sullivan, 703 A.2d at 748.

In this case, even if the Board and Chalek Intervenors prevail on their estoppel defenses, it is likely that the issue would recur. The history of this case suggests as much. Indeed, certain of the positions were created in 2004. There have been grievances filed and a subset of the issue has once been submitted to the Superior Court. Council 94 I. That decision was not appealed and, thus, the parties have continued in discord about the scope and import of the ruling. This matter was subsequently filed in 2011 and delayed for various reasons, including the parties'

attempts at resolution. And, most importantly, employment is cyclical. Hence, this issue will recur when employees are eventually terminated for any reason, such as retirement, if the existing positions are filled, or if new, similar positions are created. Accordingly, the Court finds that declaratory judgment is appropriate in this matter.

III

Analysis

A

Election of Remedies

Both the Board and the Chalek Intervenors argue that Council 94 is precluded from seeking a declaratory judgment from this Court. They contend that because Council 94 previously filed a grievance and an unfair labor practice charge regarding the University Police positions, such filings have trigged the election of remedies doctrine.

"The doctrine of election of remedies is one that is grounded in equity and is designed to mitigate unfairness to both parties by preventing double redress for a single wrong." State, Dep't of Envtl. Mgmt. v. State, Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002) (citing 25 Am. Jur. 2d Election of Remedies § 2 (2001)). Thus, "when one party to a [collective bargaining agreement] attempts to take advantage of the grievance procedure and loses, the election of remedies doctrine prohibits that party from pursuing the same dispute in the courts of this state." Cipolla v. R.I. Coll., Bd. of Governors for Higher Educ., 742 A.2d 277, 281 (R.I. 1999) (citing City of Pawtucket v. Pawtucket Lodge No. 4, Fraternal Order of Police, 545 A.2d 499, 502-03 (R.I. 1988)).

Our Supreme Court has affirmatively and strictly applied the election of remedies doctrine in various factual contexts. See Cranston Teachers' Ass'n v. Cranston Sch. Comm., 423

A.2d 69, 69-71 (R.I. 1980) (teacher's association invoked grievance procedures through its collective bargaining agreement to resolve a salary dispute, which then foreclosed the association from seeking redress in the Superior Court); City of Pawtucket, 545 A.2d at 503 (policeman's union submitted a dispute over fulfillment of positions for arbitration and lost at arbitration; upon seeking declaratory judgment from the Superior Court, both the Superior and Supreme Courts held that the union could not come "to the courthouse to seek relief"); Cipolla, 742 A.2d at 282 (Rhode Island College employee sought enrollment in a pension program via arbitration, and the Supreme Court held that "[o]nce the plaintiff entered the grievance procedure, he had selected the remedy to adjudicate his claim. . ."); R.I. Emp't Sec. Alliance, Local 401, S.E.I.U. v State, Dep't of Emp't and Training, 788 A.2d 465, 468 (R.I. 2002) (Rhode Island Department of Labor and Training union utilized Merit Act procedures to pursue relief, and then attempted to bring their case in Superior Court; the Supreme Court determined that the Department failed to follow through with the selected remedy and was "barred from pursuing the matter in court until the remedy they initiated has been exhausted").

However, in each of the cases, the election of remedies doctrine was applied only after the plaintiff had already sought a remedy by or through a different method. See e.g., Cranston Teachers' Ass'n, 423 A.2d at 69-71 (applying the doctrine after the grievance procedures of the collective bargaining agreement were invoked); City of Pawtucket, 545 A.2d at 499 (finding for the election of remedies doctrine because plaintiff sought remedy from the Superior Court after submitting to arbitration and receiving an unfavorable decision); Cipolla, 742 A.2d at 277-82 (holding that the election of remedies doctrine applied because plaintiff filed for injunctive relief after denial of his grievance through arbitration); R.I. Emp't Sec. Alliance, 788 A.2d at 465-68 (barring plaintiffs' further pursuit of a claim after plaintiffs received other legal relief).

In July of 2008, Council 94 filed an Unfair Labor Practice Charge (ULPC), the basis of which was the alleged unilateral transfer of Campus Police Lieutenants from Local 528 to another bargaining unit without a written agreement between the units and the State. (Council 94 ULPC.) In the ULPC, Council 94 sought to have the transfer rescinded. Subsequently, in August of 2008, Council 94 filed a grievance regarding the creation of the new University Police Sergeant position only, and sought to have the Police Sergeant position assigned to Local 528. (Council 94 Grievance, G-8315.) Both of these matters were placed in abeyance at the request of Council 94, and they remain in abeyance to this day. Both the Board and the Chalek Intervenors contend that these two previous actions address the issues raised in the instant case and seek the same remedy of having the University Police positions switched from non-classified to classified. They argue that where Council 94 elected to file a ULPC and a grievance, it cannot now come to this Court seeking a declaratory judgment because the relief would be the same.

"This Court long has adhered to the election of remedies doctrine to 'mitigate unfairness to both parties by preventing double redress for a single wrong.'" Martone v. Johnston Sch. Comm., 824 A.2d 426, 429 (R.I. 2003) (internal citation omitted). Thus, when either party to a dispute seeks relief via grievance procedures or administrative remedies, that party is barred from "pursuing the same dispute in the courts of this state." Id. (internal citation omitted).

Here, however, not only is the issue before the Court one of statutory construction and the classification of the new University Police positions, which is not within the purview of the Grievance Committee or the State Labor Relations Board, but the discrete issues presented in the ULPC and the grievance are part of a larger overarching dispute: whether the Board was authorized to create non-classified campus police positions. The remedies sought at the administrative level were not "essentially the same" as what Council 94 seeks from this Court

via declaratory judgment. State, Dep't of Envtl. Mgmt., 799 A.2d at 278-79 (emphasis in original). Even had Council 94 prevailed on both the ULPC and the grievance, the issue now before the Court would not have been resolved, and the Board would not be prevented from creating more non-classified campus police positions in the future. Furthermore, Council 94 has not lost at the administrative stage and come to this Court for a second bite at the apple. See Cipolla, 742 A.2d at 281 (holding that "when one party to a CBA attempts to take advantage of the grievance procedure and loses, the election of remedies doctrine prohibits that party from pursuing the same dispute in the courts of this state").

Council 94's grievance sought redress based on the creation of the University Police Sergeant position, which was assigned to Local 2877 instead of Local 528; the grievance did not address the Lieutenants, nor did it address the broader question of the Board's power, or lack thereof, to create non-classified positions. Similarly, with the ULPC, the crux of the issue was not the power of the Board regarding the creation of a non-classified position, but rather the transfer of the Police Lieutenants from one bargaining unit to the other without the proper written agreement. Cf. Cipolla, 742 A.2d at 282 (finding that election of remedies was triggered where "[t]he statutory right that the plaintiff attempted to redeem dealt only with a term or condition of employment that also apparently was regulated by the CBA"). The present issue is different from one individual's terms of employment, and Council 94's administrative actions have not triggered the election of remedies. Thus, the instant motion for declaratory judgment is properly before this Court. See State, Dep't of Envtl. Mgmt., 799 A.2d at 277 (the doctrine is meant to prevent "double redress for a single wrong," which is distinguishable from the broader issue currently before the Court).

B

Statutory Interpretation

Council 94 asserts that § 16-59-22(a) identifies the categories of positions that may be designated as non-classified as "administrative, instructional and research employees, and secretarial employees[.]" It argues that campus police do not fall into any of the categories and, hence, cannot be designated as non-classified. The Pascale Intervenors agree. The Board and Chalek Intervenors, on the other hand, contend that the statutory scheme contained in § 16-59-22, when read as a whole, provides the Board with the authority to establish the new, non-classified positions.

Where "there is no room for statutory construction[, this Court] must apply the statute as written." Interstate Navigation Co. v. Div. of Pub. Utils., 824 A.2d 1282, 1287 (R.I. 2003) (internal citations omitted). "'It is well settled that when the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" Providence & Worcester R.R. Co. v. Pine, 729 A.2d 202, 208 (R.I. 1999) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). Only "[w]hen confronted with statutory provisions that are unclear and ambiguous, [shall this Court] examine statutes in their entirety in order to 'glean the intent and purpose of the Legislature.'" Id. (quoting State v. Flores, 714 A.2d 581, 583 (R.I. 1998)).

Moreover, a court must "remain[] mindful of the longstanding principle that 'statutes should not be construed to achieve meaningless or absurd results.'" Piccoli & Sons, Inc. v. E & C Constr. Co., 64 A.3d 308, 312 (R.I. 2013) (quoting McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012)). Additionally, "it is generally presumed that the General Assembly 'intended every word of a statute to have a useful purpose and to have some

force and effect.'" State v. Briggs, 58 A.3d 164, 168 (R.I. 2013) (quoting LaPlante v. Honda N. Am., Inc., 697 A.2d 625, 629 (R.I. 1997)). This Court must therefore not myopically focus on one particular area, aspect, or sentence of a statute, but instead '"consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections."' Id. (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)); In re Brown, 903 A.2d 147, 149 (R.I. 2006); Park v. Ford Motor Co., 844 A.2d 687, 692 (R.I. 2004) (stating "[s]tatutory construction is a holistic enterprise"). Ultimately, the objective behind this Court's interpretation of a statute is "to give effect to the purpose of the act as intended by the Legislature." McAninch v. State of R.I. Dep't of Labor & Training, 64 A.3d 84, 86 (R.I. 2013) (internal citations omitted).

Here, the statutory interpretation begins with §§ 36-4-2 and 36-4-2.1. Section 36-4-2 states that, "The classified service shall comprise all positions in the state service now existing or hereinafter established, except the following specific positions which with other positions heretofore or hereinafter specifically exempted by legislative act shall constitute the unclassified service. . . ." (Emphasis added.) Section 36-4-2.1 exempts the employees of the legislative and judicial departments. In the instant dispute, Campus Police Officers are not members of either the executive or judicial branches, nor are they specifically exempted in § 36-4-2. Thus, Campus Police may be non-classified positions only if "specifically exempted by legislative act." Sec. 36-4-2; Gibbons, 694 A.2d at 665.

The Merit System as applied to the Board is addressed at § 16-59-22. Section 16-59-22 reads in its entirety:

> "(a) The appointment, promotion, salaries, tenure, and dismissal of administrative, instructional, and research employees, and secretarial employees not exceeding ten (10) in number, of the state colleges shall not be subject in any manner or degree to

> control by the personnel administrator or by any officer or board other than the council on postsecondary education. The certification of teachers at the University of Rhode Island is abolished, except for teachers that elect to come or remain under it.
>
> "(b) All positions that are exempt from the Merit System Law, chapter 4 of title 36, which become vacant or that are to be established, must be forwarded to the personnel administrator, who in consultation with the deputy assistant commissioner of education in charge of personnel and labor relations shall determine whether the position(s) in question shall remain in the council on postsecondary education non-classified service or be established in the classified service of the state.
>
> "(c) No position presently in the classified service of the state subject to the Merit System Law, chapter 4 of title 36, shall be changed or modified so as to establish the position in the council on postsecondary education non-classified service.
>
> "(d) Faculty positions, presidents, vice presidents, deans, assistant deans, and student employees of the higher education institutions shall not be covered by the preceding provisions and shall remain in the council on postsecondary education non-classified service."

The Board argues that an exemption for the positions at issue occurs in § 16-59-22(a), which states: "The appointment, promotion, salaries, tenure, and dismissal of administrative, instructional, and research employees, and secretarial employees . . . of the state colleges shall not be . . . control[led] by the personnel administrator or by any officer or board other than the council on postsecondary education." All the parties agree that Campus Police do not fall into the categories of instructional, research, or secretarial employees, so the crux of the instant dispute is whether Campus Police Officers qualify as administrative employees, and are thus exempted and may be non-classified.

The word "administration" is defined as "the activities that relate to running a company, school, or other organization[;] performance of executive duties : management[.]" Merriam-Webster Online Dictionary (retrieved on Dec. 30, 2014 from http://www.merriam-

webster.com/dictionary/administration); see Chambers v. Ormiston, 935 A.2d 956, 962 (R.I. 2007) ("In carrying out the process of determining the meaning of the words employed by an enacting legislature, reference to contemporaneous dictionaries is appropriate and often helpful."). An administrative employee is one "whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers. . . ." 51B C.J.S. Labor Relations § 1311 (2015).

In the 2009 decision by the Superior Court, the duties of Campus Police Officers were found to be "plenty distinguishable from any ordinary definition of an administrative employee."[5] Council 94 I, at 10. The Court was not persuaded by the Board's argument that the Campus Police Officers constituted administrative employees under § 16-59-22. Id. at 9. The Court noted that the work of Campus Police Officers, as per § 16-52-2, encompasses a duty "to protect the property of each college or university, [and] to suppress nuisances and disturbances[.]" Id. at 10. As such, the Court found that "this obligation . . . [is] distinguishable from any ordinary definition of an administrative employee." Id. The Court did "not see anything in the statutory scheme that would suggest a legislative intent to remove [campus police officers] from classified service[.]" Id. at 14. Accordingly, the Court found that the legislature did not intend to provide the Board "with the ability to remove campus police officers from classified service." Id. The decision, however, did not address the status of the University Police positions.

The University Police and Campus Police job descriptions are strikingly similar. The basic function of the University Police Lieutenant position is to:

[5] Justice Vogel relied on the dictionary definition of "administrative," as well as its use under the Fair Labor Standards Act (FLSA), which does not include police officers as administrative employees. See 29 C.F.R. 541.3; Foster v. Nationwide Mut. Ins. Co., 695 F. Supp. 2d 748, 753 (S.D. Ohio 2010).

> "Provide supervision to University Police Sergeant(s) and lesser rank public safety personnel for multiple shifts. With a high degree of professionalism, promote public safety, enforce laws and Board of Governors and University of Rhode Island regulations; effect arrests in accordance with provisions of federal, state, and local laws and ordinances; maintain order and security on premises within the legal jurisdiction; provide emergency medical services to the University community; protect life and property. Hours vary and the incumbent is subject to 24-hour call back as required." (URI Position Description for University Police Lieutenant, 1.)

In comparison, the general statement of duties for the Campus Police Lieutenant, the classified position that Council 94 contends is identical to that of University Police Lieutenant, includes:

> "On an assigned shift, to supervise the work of Campus Police Officers and others of a lesser rank engaged in performing duties of a patrolling, protective and policing nature upon the premises of a post-secondary educational institution; to make arrests in accordance with provisions of the law; to act as shift Commander in the absence of a superior officer; and to do related work as required." (URI Position Description for Campus Police Lieutenant, 1.)

While there was no Campus Police Sergeant position, the University Police Sergeant job closely tracks that of University Police Lieutenant and Campus Police Lieutenant:

> "Provide supervision to Police Officers and lesser rank public safety personnel at the University of Rhode Island campuses. With a high degree of professionalism, promote public safety, enforce laws and Board of Governors and University of Rhode Island regulations; effect arrests in accordance with provisions of federal, state, and local laws and ordinances; maintain order and security on premises within the legal jurisdiction; provide emergency medical services to the University community; protect life and property." (URI Position Description for University Police Sergeant, 1.)

Whether the University Police positions can be truly considered new or simply constitute a re-labeling of prior campus police positions, the duties and responsibilities of each are essentially the same.

While the job descriptions for the University Police Sergeant and Lieutenant, as well as

for the Campus Police Lieutenant, include duties and responsibilities that are administrative in nature, such additional duties do not transform police positions into administrative positions. Tasks such as reviewing reports or supervising other officers are secondary to the basic functions of campus police; in other words, there cannot be law enforcement without the requisite paperwork and supervisory hierarchy. When reading these job descriptions, they do not match common administrative job descriptions. See Hines v. State Room, Inc., 665 F.3d 235, 242 (1st Cir. 2011) (holding that administrative employees are generally those whose "work directly relate[s] to the management or general business operations of the employer. . . ."). The Campus Police do not manage the school or provide administrative support; they protect it and enforce state laws and school regulations. See URI Position Description for University Police Sergeant and for University Police Lieutenant.

However, the Board and the Chalek Intervenors argue that § 16-59-22(a) should be read as a broad exemption of educational employees, and that the subsequent subsections—§§ 16-59-22(b), (c), and (d)—should be read in such a way that the new campus police positions are exempted. The Board contends that § 16-59-22(b) limits the broad exemption in subsection (a) when an exempt position becomes vacant or when a new position is to be established. Should either of those events occur, then there must be a determination whether the position will remain non-classified or become classified. Section 16-59-22(c) is then read as a grandfathering provision which protects incumbents as of the date of passage of the statute; such employees remain in the Merit System, and the Board acknowledges that it may not remove them from classified service by changing a job description. Finally, § 16-59-22(d) sets forth specific jobs that are exempted, and the Board argues that this subsection requires the term "administrative" to mean something other than the positions listed in (d), specifically that it must include campus

police.

This reading of the statute ties in closely with the argument presented by the Chalek Intervenors, who emphasize, in particular, the distinction between "position" and "classification," as they relate to §§ 36-4-9 and 16-59-22. The Chalek Intervenors argue that Council 94 conflates the terms, but that "position" refers to a particular person's job within a "classification." Thus, with this reading, the Chalek Intervenors contend it is evident in § 16-59-22 that "position" refers to incumbents in the classified service only, which would not include the newly-created University Police Officers because they were not established until 2004 and 2005, well after the passage of the statute in 1988. Furthermore, the Chalek Intervenors contend that any new position requires a consultation between the DOA and the Board, under § 16-59-22(b).

The plain language of the subsections do not support their arguments. Section 16-59-22(c) simply states that classified positions may not be converted to non-classified positions. It was this section that was prominent in the Court's ruling in Council 94 I. The argument that subsection (c) is simply a grandfathering clause is not borne by the statutory language which refers to "[n]o position presently in the classified service" rather than an employee presently in the system. Indeed, the language is consistent with § 36-4-2 which sets out the statutory precept that "[t]he classified service shall comprise all **positions"** other than those specifically exempted. Sec. 36-4-2 (emphasis added).[6]

Likewise, § 16-59-22(b) is of no avail to the Board and the Chalek Intervenors. Again,

[6] The argument also runs counter to the Order in Council 94 I where the Court Ordered that the "aforementioned Campus Police Officers **and those positions** held by them are not exempt from the merit system and are not non-classified employees/positions of the Board of Governors." C.A. No. PC-09-4731, Order, March 31, 2011 (emphasis added).

that subsection states that all "positions that are exempt from the Merit System Law, chapter 4 of title 36, which become vacant or that are to be established, must be forwarded to the personnel administrator, who in consultation with the deputy assistant commissioner of education in charge of personnel and labor relations shall determine whether the position(s) in question shall remain in the council on postsecondary education non-classified service or be established in the classified service of the state." Sec. 16-59-22(b). The section refers to the process by which "exempt" positions may be converted to "classified" positions. However, the position must first be exempt under the statutory scheme, which necessarily returns us to § 16-59-22(a).

The Chalek Intervenors also argue that § 16-52-2 supports their position. This section provides the Board with the authority to appoint Campus Police.[7] However, the section was originally enacted in 1972, prior to the enactment of § 16-59-22. P.L. 1972, ch. 280. It is uncontested that upon the enactment of § 16-52-2, Campus Police Officers were in the classified system. It was only in 1988 that the issue of the applicability of the Merit System to employees in the Board system was addressed at § 16-59-22. P.L. 1988, ch. 84.

Moreover, it is plain that the legislature intended to fully address the applicability of merit systems at § 16-59-22. Not only is the section entitled "Applicability of merit system . . . ," subsection (d) of the statute states that certain non-classified positions shall remain non-classified. Campus police and/or law enforcement positions are not listed as one would expect if they had previously been exempted under § 16-52-2. The remaining sections identify the

[7] It reads in pertinent part:

> "The board of governors for higher education may appoint one or more persons who may act as police officers upon the property and highways of state colleges and universities subject to the control of the board. The campus police officers shall protect the property of each college or university, suppress nuisances and disturbances and breaches of the peace, and enforce laws and regulations for the preservation of good order." Sec. 16-52-2.

circumstances under which certain categories of positions are "transferrable to classified service." Sec. 16-59-22.

Hence, the Board and the Chalek Intervenors' arguments about § 16-59-22 turn on determining that Campus Police Officers have been specifically exempted by the legislature, which requires finding that Campus Police Officers fall under the category of "administrative." This Court does not find that Campus Police, including supervisory offices such as Lieutenants and Sergeants, fall within the category of administrative, based on the plain meaning of the word and the job descriptions of the Campus Police Officers. See Chambers, 935 A.2d at 960 (holding that where the "statute in question has a plain meaning and therefore is unambiguous . . . we simply apply that plain meaning to the case at hand).

The Board appears to have renamed the Campus Police Lieutenant position, and also created the "new" position of University Police Sergeant, which description and job duties are strikingly similar, but whether the positions are actually new is irrelevant because § 16-59-22(a) clearly states which positions are exempt from the Merit System, and it does not include University Police Lieutenants or Sergeants. See 2A Sutherland Statutory Construction § 45:2 The problem of ambiguity (7th ed. 2014) (". . . courts need not, and do not, interpret a facially clear and unambiguous statute. . . ."); Providence & Worcester R.R. Co., 729 A.2d at 208 (holding that "It is well settled that when the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings" (internal citation omitted)).

Had the legislature intended to exempt any category of law enforcement, it had the opportunity to do so, either specifically or by category. For instance, § 36-4-2 lists alternative categories of exempted positions such as "[e]mployees of both houses of the general assembly,"

and specific positions such as "[d]eputy sheriffs" within the department of public safety. Secs. 36-4-2(2) and (13); see generally § 36-4-2. Moreover, title 16 specifically addresses the appointment of campus police; yet, when the legislature had the opportunity to exempt law enforcement from the Merit System, the statutes are notably silent on that regard. Secs. 16-52-2, 16-59-22. "[I]t is not the function of this Court to act as a super legislative body and rewrite or amend statutes already enacted by the General Assembly." Bandoni v. State, 715 A.2d 580, 585 (R.I. 1998) (relying on principles of judicial restraint when refusing to create a cause of action for violating the Victim's Bill of Right statute where a duty to apprise crime victims of their rights did not exist at common law and where the legislature did not provide for civil liability).

Thus, this Court finds that the University Police and/or Campus Police supervisory positions are not exempted from classified employment under the administrative exemption contained in § 16-59-22(a) or elsewhere within the statutory scheme.[8]

C

Remedies/Affirmative Defenses

The Board and the Chalek Intervenors have argued that various affirmative defenses apply in this case and the matter of a remedy remains at issue. The Pascale Intervenors argue that the non-classified campus police positions should be voided. Council 94 is not advocating such a remedy. The arguments are fact-intensive and turn, in part, on contested evidence

[8] The Board also argues that it is owed deference in its interpretation of the statute. Our Supreme Court has recognized that, "[a]lthough th[e] Court is the final arbiter of questions of statutory construction, it is also true that 'we give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing. . . .'" Rossi v. Emps.' Ret. Sys., 895 A.2d 106, 113 (R.I. 2006) (quoting Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003)). Here, however, the DOA is the agency to whom deference might be given, and the DOA has taken a neutral position regarding this matter. In fact, the DOA stated at oral argument that other than processing paperwork, there is no record that the DOA ever addressed the issue substantively.

regarding the events that led to the prolonged efforts to address this issue. Hence, the Court declines to rule on those issues absent an evidentiary hearing. By declaring that the Board does not have the power to exempt the positions from the classified system, this Court does not preclude arguments by any of the parties as to the appropriate remedies in this case.

IV

Conclusion

After consideration of the law and facts, the Court finds that Council 94's request for declaratory judgment is not barred by the election of remedies doctrine because the grievance and ULPC were much more narrowly focused than the issue currently before this Court, and a resolution of either matter would not have provided a resolution to the overarching question of the Board's power. The Court further finds that declaratory judgment is appropriate in this case. The Court holds that the Board does not possess the authority to exempt University and/or Campus Police supervisory positions from classified employment pursuant to the statutory scheme contained in §§ 36-4-1, et seq. and 16-59-22(a). As a result, Intervenor Erica Vieira's motion for summary judgment is likewise denied.

As to the affirmative defenses and available remedies, however, the Court orders that a hearing be scheduled regarding those issues.

Counsel are requested to submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Council 94, AFSCME AFL-CIO v. Rhode Island Board of Governors of Higher Education, et al.**
CASE NO:	**PC-2011-6147**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 18, 2015**
JUSTICE/MAGISTRATE:	**Matos, J.**
ATTORNEYS:	
For Plaintiff:	**Carly B. Iafrate, Esq.**
For Defendant:	**George H. Rinaldi, Esq.** **Carolyn A. Mannis, Esq.** **Jeffrey W. Kasle, Esq.** **Jeffrey S. Michaelson, Esq.**