STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 25, 2021)

FRANK ANDRE, ERIC BAZZLE, STEPHEN BISHOP, JAMES BOMBA, GERALD CAPALDI, ROBERT CARDIN, ANTHONY CEPRANO, DAVID DiORIO, JAMES P. GRANDE, SR., ROBERT MORRISSEY, DOUGLAS RANDALL, ANTHONY ROSSI, KENNETH SCANDARIATO, DAVID VARTIAN, and ANDREW ZARLENGA, Petitioners,	:	
v.	:	**C.A. No. PC-2019-7971**
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, By and through its Executive Director, FRANK KARPINSKI, Respondent.	:	

DECISION

McGUIRL, J. Before this Court is an administrative appeal by Petitioners from a decision of the Retirement Board of the Employees' Retirement System of Rhode Island (ERSRI or the Board) in which the Board adopted a decision by Hearing Officer Teresa M. Rusbino (Hearing Officer) upholding ERSRI's denial of Petitioners' request to reverse ERSRI's decision recalculating and recouping their pension benefits. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Petitioners are all retired members of the North Providence Fire Department. Decision of Hearing Officer at 2. The North Providence Fire Department was a

participant in a pension plan administered by the Municipal Employees' Retirement System (MERS). *Id.* Petitioners were members of the plan pursuant to a Collective Bargaining Agreement (CBA). *Id.* The Town of North Providence (Town) was required to contribute to the plan in an amount equal to 6 percent of the salary or compensation earned by each member pursuant to G.L. 1956 § 45-21-41(a)-(b). *Id.* at 3. In calculating that amount, the Town had been using the full amount of longevity payments made to Petitioners as part of the salary or compensation on which to base their contributions. *Id.* Those longevity payments were, in accordance with the CBA between the Town and the firefighters' union, calculated as a percentage of Petitioners' gross pay, meaning that part of the longevity payments was based on payment for overtime pay. ERSRI Record at 67.

In early 2011, ERSRI discovered that the Town had been using the aforementioned method to calculate its plan contributions and informed the Town that its contributions ought to exclude the portion of longevity payments made on the overtime portion of gross pay. Decision of Hearing Officer at 3. It was not until May and June 2017, however, that ERSRI sent letters to Petitioners informing them of the issue. *Id.* at 4. In those letters, ERSRI informed the Petitioners of their decision to both prospectively reduce their pension benefits and recoup the previously overpaid amounts. ERSRI Record at 96, 99-120. Petitioners made a formal request to ERSRI to reverse its decision to recalculate, which was denied by a letter dated February 14, 2018. Decision of Hearing Officer at 5. In that letter, ERSRI stated that because G.L. 1956 § 36-8-1(8) excluded overtime from its definition of compensation, longevity payments based on overtime were also properly excluded. ERSRI Record at 5.

Petitioners appealed and requested a hearing via letter dated March 9, 2018; the matter was heard before the Hearing Officer on October 1, 2018. In a written decision on April 22, 2019, the Hearing Officer upheld the decision to recalculate, reasoning as follows: contributions are meant to be calculated using a percentage of "salary or compensation" according to § 45-21-41(a). Decision of Hearing Officer at 5. In § 36-8-1(8), "compensation" is defined as "salary or wages earned and paid for the performance of duties for covered employment, including regular longevity or incentive plans approved by the board, but shall not include payments made for overtime or any other reason other than performance of duties[.]" *Id.* at 5-6. Therefore, she concluded that longevity payments based on overtime pay should be excluded from "compensation" for contribution calculation purposes. *Id.* at 6. The Hearing Officer additionally found that to the extent the CBA purported to require the Town to make contributions based on that overtime-longevity, it was ineffective because it is beyond the authority of a municipality to bind itself to a contract that contravenes state law or divests the state agency given the authority to interpret state law of that authority. *Id.* at 6 (citing *City of Cranston v. International Brotherhood of Police Officers, Local 301*, 115 A.3d 971, 979 (R.I. 2015)). Finally, the Hearing Officer found that estoppel would not prevent the Board from recalculating Petitioners' benefits. *Id.* at 7-8. On July 10, 2019, the Board voted to adopt the Hearing Officer's decision. ERSRI Record at 171.

Petitioners instituted this appeal on July 30, 2019. In their petition, they argue that the Town was required to make pension contributions based on the longevity payments calculated by reference to Petitioners' gross pay, including overtime, because of the Supreme Court's decision in *Town of North Providence v. Local 2334, IAFF*, 763

A.2d 604 (R.I. 2000).[1] Therefore, they assert that the Hearing Officer's decision to the contrary was in violation of statutory provisions, in excess of the agency's statutory authority, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the record, and arbitrary or capricious or characterized by abuse of discretion. *See* § 42-35-15(g). Specifically, Petitioners argue that the Hearing Officer's decision was based on an improper interpretation of § 36-8-1(8). Additionally, they argue that the decision to recoup benefits exceeded the Board's statutory authority and was inequitable given the lack of notice to Petitioners during the six-year gap between the Board's discovery of the issue in 2011 and their letters to Petitioners in 2017.

II

Standard of Review

The Superior Court's review of a decision of the Board is governed by the Administrative Procedures Act. The applicable standard of review is as follows:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> > "(1) In violation of constitutional or statutory provisions;
> > "(2) In excess of the statutory authority of the agency;
> > "(3) Made upon unlawful procedure;

[1] In that decision, the Supreme Court upheld an arbitration award holding that the term "gross pay," as used in the portion of the CBA between the Town and the firefighters' union that provided for the calculation of the firefighters' longevity payments as a percentage of gross pay, properly included holiday pay. *Town of North Providence*, 763 A.2d at 605-06.

> "(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).

In conducting its review, the Superior Court sits as an appellate court. *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). Additionally, the Superior Court's review "shall be confined to the record." Section 42-35-15(f).

III

Analysis

A

Meaning of "Compensation" in § 36-8-1(8)

There is no dispute as to the underlying facts of this matter; rather, the parties contest the interpretation of the applicable statutes. This Court's review thus calls for us to interpret the contents of §§ 36-8-1(8) and 45-21-41(a). The "'ultimate goal'" of statutory construction "'is to give effect to the purpose of the act as intended by the Legislature.'" *Lang v. Municipal Employees' Retirement System of Rhode Island*, 222 A.3d 912, 915 (R.I. 2019) (quoting *Bluedog Capital Partners, LLC v. Murphy*, 206 A.3d 694, 699 (R.I. 2019)). Additionally, this Court must "'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.'" *5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 167 (R.I. 2016) (quoting *Western Reserve Life Assurance Co. of Ohio v. ADM Associates, LLC*, 116 A.3d 794, 798 (R.I. 2015)). "'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.'" *Town of Exeter v. State*, 226 A.3d 696, 700 (R.I. 2020) (quoting *Lang*, 222 A.3d at 915).

"'However, when a statute is susceptible of more than one meaning, we employ our well-established maxims of statutory construction in an effort to glean the intent of the Legislature.'" *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008) (quoting *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98-99 (R.I. 2007)). Among those maxims is the "canon of statutory construction" that "'give[s] deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized.'" *In re Proposed Town of New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2011) (quoting *Town of Burrillville*, 950 A.2d at 445). Finally, "'[i]f a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this [C]ourt will look beyond mere semantics and give effect to the purpose of the act.'" *O'Connell v. Walmsley*, 156 A.3d 422, 428 (R.I. 2017) (quoting *Commercial Union Insurance Co. v. Pelchat*, 727 A.2d 676, 681 (R.I. 1999)).

The relevant statutory scheme runs as follows: Section 45-21-41(a), which governs the required retirement contributions of members of MERS, requires that "each member shall contribute an amount equal to six percent (6%) of salary or compensation earned and accruing to the member[.]" The Town is instructed to "deduct the previously stated rate from the compensation of each member on each and every payroll of the

municipality[.]" Section 45-21-41(b). The relevant definition of "compensation"[2] is set out in § 36-8-1(8):

> "'Compensation' . . . shall mean salary or wages earned and paid for the performance of duties for covered employment, including regular longevity or incentive plans approved by the board, but shall not include payments made for overtime or any other reason other than performance of duties, including but not limited to the types of payments listed below:
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> > "(i) Payments contingent on the employee having terminated or died;
> > "(ii) Payments made at termination for unused sick leave, vacation leave, or compensatory time;
> > "(iii) Payments contingent on the employee terminating employment at a specific time in the future to secure voluntary retirement or to secure release of an unexpired contract of employment;
> > "(iv) Individual salary adjustments which are granted primarily in anticipation of the employee's retirement;
> > "(v) Additional payments for performing temporary or extra duties beyond the normal or regular work day or work year."

The parties focus their attention on the application of the specific statutory terms of "regular longevity" and "overtime" to the payments at issue. Appellants' Br. at 2; Mem. Law of MERS Supp. July 10, 2019 Decision of Board at 7. Proper interpretation and application of those terms must be guided by the broader context of the statute. *See, e.g.*, *Chambers v. Ormiston*, 935 A.2d 956, 964 (R.I. 2007) (quoting *Davis v. Michigan Department of the Treasury*, 489 U.S. 803, 809 (1989)) ("'It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'"). The statutory definition of

[2] This definition of "compensation" is incorporated into the municipal retirement statute through § 45-21-2(22), which provides that "[a]ny term not specifically defined in this chapter and specifically defined in chapters 36-8 through 36-10 shall have the same definition as set forth in chapters 36-8 through 36-10."

compensation in § 36-8-1(8) centers on the distinction between payments made "for the performance of duties for covered employment" and payments made for "any other reason other than performance of duties[.]" The former category, which includes "regular longevity or incentive plans approved by the board," qualifies as compensation; the latter category, which includes "payments made for overtime" and other nonexclusive examples, does not. Section 36-8-1(8).

Therefore, the plain language of the statute indicates the intent of the Legislature that compensation be defined as "salary or wages earned and paid *for the performance of duties* for covered employment," to the exclusion of all payments for "*any other reason* other than performance of duties[.]" *Id.* (emphasis added). In that context, longevity payments properly qualify as compensation because, as payments made upon the completion of a quantified number of years of employment, they represent monies "earned and paid for the performance of duties for covered employment" over that period. *Id.*; *see also Murray v. McWalters*, 868 A.2d 659, 661 (R.I. 2005) ("As [an] employee in state service for more than ten years, plaintiff also receives a statutory longevity payment in the amount of 5 percent of her base pay."); *East Greenwich Fire District By & Through Zaino v. Henrikson*, 632 A.2d 641, 641 (R.I. 1993) ("[The] collective-bargaining agreement provided for longevity pay for unit employees based on the number of years of employment with the department."). On the other hand, overtime payments are excluded because they represent additional monies paid in recognition of the specific hours worked. *See* G.L. 1956 § 28-12-4.1(c) ("No city, town, or fire district shall employ any 'firefighter,' . . . for an average workweek longer than forty-two (42) hours unless the firefighter is compensated at the rate of one and one-half (1 1/2) times

his or her regular rate, for all hours worked in excess of forty-two (42) hours based upon an average workweek.").

While § 36-8-1(8) does specifically include and exclude certain types of payments from its definition of compensation, it does not set out the exact contours of its fundamental dividing line. Excluded payments are "not limited to the types of payments listed," while the included category of "regular longevity or incentive plans approved by the board" is not specifically defined. Section 36-8-1(8). In this regard, § 36-8-1(8) must be read in connection with § 36-8-2, which establishes a "retirement system . . . under the management of the retirement board," and § 36-8-3, which vests the "general administration and the responsibility for the proper operation of the retirement system" in the Board. *See City of Cranston v. International Brotherhood of Police Officers, Local 301*, 230 A.3d 564, 573 (R.I. 2020), as corrected (June 23, 2020) (citing § 36-8-2) ("[I]t is clear to us that the Legislature's intent in enacting this statutory structure is that the Retirement Board is cloaked with the authority to determine eligibility, manage the financing of the retirement system, and compensate eligible members of the retirement system by paying the appropriate retirement benefit after they have retired and ended their employment."). This statutory scheme reveals the Legislature's intent that ERSRI interpret and apply the definition of compensation in § 36-8-1(8) to the varieties of remuneration that state employees might receive.

With the above context in mind, this Court returns to the payments at issue. The contested "longevity-overtime" payments do not fall clearly within the language of § 36-8-1(8). The longevity-overtime payments were disbursed to Petitioners annually as part of one lump sum along with the portion of the longevity payments that were calculated as

a percentage of the Petitioners' wages exclusive of overtime. Petitioners did not receive any portion of that payment unless and until they performed their duties for a specified period of years. Receipt of the entire lump sum payment was thus contingent upon each Petitioner's full performance of the requisite term of employment. The portion calculated as a percentage of overtime was "earned and paid for the performance of duties for covered employment[.]" Section 36-8-1(8). The lump sum longevity payments were made pursuant to Petitioners' CBA, which set out a specific schedule of longevity payments and periodic increases based on seniority. ERSRI Record at 67-68 (Town of North Providence and Local 2334 - Int'l Ass'n of Firefighters, AFL-CIO, Contract, July 1, 2001 – June 30, 2004). The longevity payments were therefore "regular" in that they were "steady or uniform in course, practice, or occurrence," were "received at stated, fixed, or uniform intervals," and were "made . . . in conformity with established or prescribed usages, rules, or discipline." Webster's Third New International Dictionary 1913 (1971).

Conversely, the longevity-overtime payments were calculated as a percentage of the overtime payments received by Petitioners. The longevity-overtime payments were "payments made for overtime." Section 36-8-1(8). They would not have been made but for the fact that Petitioners had already received the underlying overtime payments. Decision of Hearing Officer at 6 ("If overtime pay is specifically excluded from the statutory definition of compensation set forth in [§ 36-8-1(8)], then it is reasonable to conclude that longevity payments based upon said overtime are also excluded."). Under this stricter construction of the statute, the fact that the contested payments were calculated by reference to overtime payments is determinative.

Given the unclear language of § 36-8-1(8) regarding the payments at issue, and ERSRI's statutory role in interpreting and administering the state's retirement system, this Court finds that deference to ERSRI's interpretation of § 36-8-1(8) is appropriate. *See In re Lallo*, 768 A.2d 921, 926 (R.I. 2001) (quoting *Gallison v. Bristol School Committee*, 493 A.2d 164, 166 (R.I. 1985)) ("[W]here the provisions of a statute are 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."). Deference to an administering agency's interpretation of an ambiguous statute is proper "'even when the agency's interpretation is not the only permissible interpretation that could be applied.'" *In re Proposed Town of New Shoreham Project*, 25 A.3d at 506 (quoting *Auto Body Association of Rhode Island v. State Department of Business Regulation*, 996 A.2d 91, 97 (R.I. 2010)). Accordingly, ERSRI's interpretation of § 36-8-1(8) as excluding longevity payments calculated with reference to overtime was not an error of law.

B

ERSRI's Decision to Order Repayment of Benefits

Although ERSRI's interpretation of § 36-8-1(8) is entitled to deference, this Court finds that ERSRI's decision to unilaterally order and institute the recoupment of benefits from Petitioners is an abuse of discretion. *See* § 42-35-15(g). "[T]o make a finding of arbitrariness, capriciousness or an abuse of discretion, 'the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" *Sakonnet Rogers, Inc. v. Coastal Resources*

Management Council, 536 A.2d 893, 896 (R.I. 1988) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)).

An action to recover wrongfully paid benefits is an action for restitution, which is an equitable remedy. *See Romano v. Retirement Board of Employees' Retirement System of R.I.*, 767 A.2d 35, 36, 46 & n.10 (R.I. 2001). In *Romano*, the Board suspended the pension benefits of a retired state employee after it discovered that the putative retiree was also working full-time as a municipal employee, thereby violating a state law designed to prevent such "double dipping." *Id.* at 37. After the retiree appealed the suspension to the Rhode Island Superior Court, the trial justice not only upheld the Board's decision, but also "ordered [the retiree] to reimburse the state *sua sponte*—even though the board never asked for this relief and even though [the retiree] never had the chance to demonstrate why such a remedy would be inequitable." *Id.* at 43. On a petition for certiorari, the Supreme Court quashed the order of restitution and "remand[ed the] case for a new trial to determine whether restitution is an appropriate remedy in this case and, if so, to what extent restitution would be equitable under the circumstances." *Id.* at 46. The Supreme Court concluded that while restitution was potentially available, its application was not automatic, and whether the retiree had "forfeited his right to retain all or certain portions of the pension overpayments" would depend on "the results of a factual and equitable inquiry" into the specific circumstances of the case. *Id.* at 44-45.

At the outset, this Court notes there is no evidence that ERSRI ever undertook such an inquiry with regard to any of the Petitioners before instituting the recoupment. The record reflects that, in total, the fifteen Petitioners would be required to pay back

$129,286.64.[3] As discussed above, ERSRI had discovered the mistaken overpayment of benefits by early 2011, as evidenced when its internal legal counsel reached out to the Town for assistance in correcting the matter. ERSRI Record at 77 (Email from Gayle C. Mambro-Martin, Esq. to Lynda Labbadia, Payroll Manager, Town of North Providence, March 28, 2011). It was not until April and May 2017 that ERSRI informed Petitioners of the overpayments, their cessation, and the recoupment of the overpaid benefits.[4] ERSRI Record at 96, 99-120. In the interim, Petitioners had continued to receive those benefits.

In their Pre- and Post-Hearing Briefs to the Hearing Officer, Petitioners argued that the attempt to claw back the overpaid benefits was barred by the equitable doctrine of laches due to ERSRI's delay in seeking repayment. ERSRI Record at 21, 134. In her decision, the Hearing Officer denied Petitioners' equitable challenge to the recoupment of

[3] Per its 2017 letters, ERSRI sought to recoup the following amounts from Petitioners: Frank Andre ($1350.91), Eric Bazzle ($8299.94), James Bomba ($6227.61), Robert Cardin ($8030.31), Anthony Ceprano ($2217.57), David DiOrio ($7324.97), James P. Grande, Sr. ($40,406.16), Robert Morrissey ($9852.60), Douglas Randall ($1300.82), Anthony Rossi ($22,342.14); Kenneth Scandariato ($6961.09), David Vartian ($1456.70), Andrew Zarlenga ($13,515.82). ERSRI Record at 99-119. A separate chart submitted by ERSRI at the October 1, 2018 hearing gives the overpayment to Eric Bazzle as $8229.94 instead of $8299.94. ERSRI Record at 35, 96. Stephen Bishop owed no money, and there is no information regarding how much money, if any, that Gerald Capaldi owed. *Id.* at 96.

[4] In its 2017 letters to Petitioners, ERSRI indicated that it would automatically institute monthly deductions to recoup the overpayments; the planned durations of the monthly deductions, each equivalent to the "same period" over which the Petitioner was overpaid, were as follows: Frank Andre (99 months), Eric Bazzle (99 months), James Bomba (129 months), Robert L. Cardin (83 months), Anthony Ceprano (121 months), David DiOrio (97 months), James P. Grande, Sr. (119 months), Robert Morrissey (129 months), Douglas Randall (81 months), Anthony Rossi (142 months), Kenneth Scandariato (120 months), David Vartian (106 months), Andrew Zarlenga (87 months). ERSRI Record at 99-119. As above, the record does not indicate the existence of a planned repayment for either Stephen Bishop or Gerald Capaldi. *Id.* at 96. Each Petitioner was also given the option of making a lump sum repayment. *Id.* at 99-119.

their benefits. Decision of Hearing Officer at 7-8. She characterized the Petitioners' argument as a claim for estoppel and failed to address the applicability of laches. *Id.* (quoting *Caron v. Town of North Smithfield*, 885 A.2d 1163, 1164 (R.I. 2005)) ("The doctrine of estoppel may be applied against public agencies, 'to prevent injustice and fraud when the agency or its officers make representations that cause a person to act or refrain from acting in a particular manner to his or her detriment.'"). The Hearing Officer also did not address whether ERSRI had induced detrimental reliance on the part of Petitioners through its continued action of sending the overpaid benefits. Equitable estoppel may rest on either "'an affirmative representation *or equivalent conduct* on the part of the person against whom the estoppel is claimed[.]'" *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1233 (R.I. 2000) (emphasis added) (quoting *Providence Teachers Union v. Providence School Board*, 689 A.2d 388, 391-92 (R.I. 1997)). Whether its basis is characterized as equitable estoppel or laches, this Court finds that equitable relief from the recoupment is warranted due to ERSRI's ongoing payment of the benefits and Petitioners' corresponding lack of notice as to the overpayments.

Laches is an equitable defense that "precludes a lawsuit by a plaintiff who has negligently sat on his or her rights to the detriment of a defendant." *Hazard v. East Hills, Inc.*, 45 A.3d 1262, 1269 (R.I. 2012) (quoting *O'Reilly v. Town of Glocester*, 621 A.2d 697, 702 (R.I. 1993)) (quotation marks omitted). Laches "is not mere delay, but delay that works a disadvantage to another." *Id.* at 1270 (quoting *Chase v. Chase*, 20 R.I. 202, 203-04, 37 A. 804, 805 (1897)) (quotation marks omitted). Our Supreme Court "has repeatedly observed that the defense of laches is not as limited in scope as it once was." *School Committee of City of Cranston v. Bergin-Andrews*, 984 A.2d 629, 644 (R.I. 2009)

(citing *Raso v. Wall*, 884 A.2d 391, 394 n.8 (R.I. 2005)). In addition, "there is no hard and fast rule for determining what constitutes sufficient prejudice to invoke the doctrine of laches[.]" *Fitzgerald v. O'Connell*, 120 R.I. 240, 248, 386 A.2d 1384, 1389 (1978). "What constitutes the essential prejudice must depend upon the circumstances of each particular case." *Pukas v. Pukas*, 104 R.I. 542, 547, 247 A.2d 427, 429 (1968) (citing *Arcand v. Haley*, 95 R.I. 357, 364, 187 A.2d 142, 146 (1963)).

In *Arena v. City of Providence*, 919 A.2d 379 (R.I. 2007), plaintiffs were retired members of the Providence police and fire departments who sued the city over a municipal ordinance that reduced the cost-of-living-adjustment (COLA) benefits associated with their pensions. *Arena*, 919 A.2d at 381-84. While the Supreme Court found in plaintiffs' favor on the question of whether the city could retroactively reduce their vested COLA benefits, it noted with disapproval that while "plaintiffs learned that their COLA benefits were going to be reduced by ordinance in 1995 and saw an actual reduction in 1996[,] . . . [they] waited until 2001 to commence their declaratory judgment proceeding in the Superior Court." *Id.* at 396. Accordingly, in fashioning an appropriate remedy, the Supreme Court *sua sponte* invoked and applied the doctrine of laches and held that plaintiffs were only entitled to reimbursement from the date in 2001 that they filed their action. *Id.* at 396 & n.13 (quoting *Northern Trust Co. v. Zoning Board of Review of Westerly*, 899 A.2d 517, 520 (R.I. 2006)) ("Given the egregious length of the delay in the instant case, 'presuming prejudice to defendants gives us no pause.'").

Conversely, the Supreme Court in *Cigarrilha v. City of Providence*, 64 A.3d 1208 (R.I. 2013), held that laches is inappropriate when a litigant acts quickly after discovering an ongoing problem. In *Cigarrilha*, a dispute arose when a homeowner applied for a

building permit, whereupon the city performed an inspection of the premises and found that the property was being used as a three-family dwelling in violation of the applicable two-family limit in the city zoning ordinance. *Cigarrilha*, 64 A.3d at 1211. That inspection was performed at some point in early 2008, and on May 1, 2008, the homeowner filed an action to enjoin the city from enforcing the zoning ordinance. *Id.* Despite evidence that the three-family occupancy violation had existed for approximately seventy years, the Supreme Court upheld the trial justice's decision not to apply the doctrine of laches because the city was not negligent as it "promptly enforce[ed] its codes once it learned of the violations." *Id.* at 1214.

Laches was applied despite a relatively short delay in *Bergin-Andrews*, 984 A.2d at 644-45. In May 2008, the Cranston school committee filed a statutory Caruolo action against the city because of insufficient provision of funding for the school budget for the 2007-2008 year. *Id.* at 634. The trial justice's decision to dismiss the action was "partially based on the equitable defense of laches," given that the school committee was "aware of the possibility of a deficit in the spring of 2007 and projected a $3.5 million deficit in October 2007, yet it did not immediately file a corrective action plan or notify the city." *Id.* at 639, 644. The trial justice "also noted that the school committee's untimely filing of its Caruolo action left no time for the city to perform a program audit." *Id.* at 639. The Supreme Court held that the trial justice's application of the doctrine of laches was "eminently justified" given that "'Caruolo action[s] [are] intended to aid a school immediately after it determines that it will not be able to meet its mandates without incurring a deficit[.]'" *Id.* at 644-45 (quoting decision of trial justice).

Here, ERSRI asserts that upon learning of the issue in 2011, it spent six years "repeatedly" attempting to acquire the information that would allow it to recalculate Petitioners' payments, "until 2017 when the Town finally provided the requested information." Mem. Law of MERS Supp. July 10, 2019 Decision of Board at 2-3. To support that proposition, ERSRI cites to several sets of email communications in the record. In March 2011, legal counsel from ERSRI informed the Town that "it will be necessary to correct all accounts in which longevity associated with overtime has been subject to retirement contributions." ERSRI Record at 77. In April 2011, ERSRI's Assistant Director of Finance emailed the Town's Acting Finance Director to obtain a copy of the contract between the Town and the fire department. Another email from ERSRI to the Town in December 2013 contained an Excel file of "NPFD retiree data[.]" *Id.* at 90. The next set of emails in the record date from September 2014, and show ERSRI's legal counsel and the Chief of the North Providence Fire Department discussing where the information needed to recalculate each retiree's benefits might be recorded, with no evidence of a resolution. *Id.* at 93-95. Finally, in March 2017, after the Town received confirmation from ERSRI regarding its legal interpretation of the payments at issue, the Town's controller provided ERSRI with "20 retired firefighters longevity calculations that need to be corrected." *Id.* at 89, 91-92.

While the above emails indicate that ERSRI was in sporadic contact with the Town regarding the need for recalculations, this Court is troubled by the lengthy and recurring gaps between those communications. ERSRI knew that with each pension check they drew, Petitioners received what it considered to be improper benefits. Accordingly, ERSRI needed to act with diligence and expedition to obtain the

information required. This Court also notes the apparent lack of urgency with which ERSRI sought to notify Petitioners of the issue, as Petitioners could have been informed of the potential change to their pensions before the exact adjustments were determined. While the transcript of the Board's July 10, 2019 meeting does reflect that ERSRI may not have known until 2017 precisely which retirees were affected, the record does not supply any cogent explanation for why ERSRI could not—or did not—identify and notify a pool of potentially affected individuals consisting of retirees from the North Providence Fire Department. *Id.* at 189 ("MR. MAGUIRE: So in 2011, did you have the names of the retirees who had been overpaid? MR. KARPINSKI: We didn't. No. We know the retirees who retired subsequent to 2011, but we wouldn't know which one of them had the longevity that included holiday pay in it."); *id.* at 191 ("MR. DION: Just to be clear, though, it is our responsibility to notify the retirees, not the Town."). As such, this Court finds that ERSRI negligently delayed the pursuit of its right to seek recovery of overpaid benefits directly from Petitioners. *See Bergin-Andrews*, 984 A.2d at 644; *Arena*, 919 A.2d at 396 & n.13.

The six-year delay between ERSRI's 2011 discovery of the overpayment issue and their 2017 letters informing Petitioners of the pension recalculation and recoupment of benefits obviously worked to Petitioners' disadvantage, unnecessarily increasing both the amount which ERSRI seeks to recoup and the length of the recoupment. *See* ERSRI Record at 166-68. (Statement of James P. Grande, Sr., President, North Providence Firefighters Retiree Association, June 27, 2019) ("During all of that time, not once was one of our firefighters contacted by ERSRI, who we receive our pensions directly from, to advise us that there [were] any errors in computation to our pensions and more

importantly, that the alleged over calculated amounts would continue to accrue without our knowledge and ultimately be recouped. . . . [T]he permanent reduction in pension amounts need not be exacerbated by the recoupment of the alleged overpayments which detrimentally affects the firefighters and their [families'] well-being."); *id.* at 192 (Employees' Retirement System Hearing, July 10, 2019) ("MR. DIBIASE: I guess I'm just troubled by this whole situation . . . . The retirees weren't notified. . . . [A]nd I know these aren't large amounts of money, but they may be significant to some particular retirees.").

This Court also notes that the equities of the situation favor Petitioners, as there is no indication of any wrongdoing or negligence on their part in relation to the overpayments. *Id.* at 193 ("MR. MAGAZINER: That's not to say that I don't have sympathy for the retirees, who, again, did nothing wrong, didn't know there was a problem, and weren't notified in a timely fashion[.]"); *see Sloat v. City of Newport ex rel. Sitrin*, 19 A.3d 1217, 1222 (R.I. 2011) (quoting *Allstate Insurance Co. v. Lombardi*, 773 A.2d 864, 873 (R.I. 2001)) ("'[E]quitable relief is limited to situations in which the party seeking this remedy presents itself to the court with 'clean hands.'"); *cf. Romano*, 767 A.2d at 44-45 (noting that despite retiree's failure to comply with retirement statute, equities of case might prevent state from recouping overpaid pension benefits). Consequently, and while this Court is mindful of the need for caution before "concluding that the government is not entitled to recover any of the overpayments[,]" *Romano*, 767 A.2d at 45, this Court finds that it is inequitable for the Board to recoup the overpaid benefits because of the disadvantage that Petitioners have suffered as a result of the Board's delay. *See Arena*, 919 A.2d at 396 & n.13.

IV

Conclusion

In conclusion, while the Board's interpretation of § 36-8-1(8) as excluding longevity payments calculated with reference to overtime was not an error of law, the Board's decision to unilaterally recoup the overpaid benefits from Petitioners is barred by the doctrines of laches and equitable estoppel. Accordingly, Petitioners' appeal is sustained, and the decision of the Board is hereby reversed. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Andre, et al. v. Employees' Retirement System of Rhode Island**
CASE NO:	**PC-2019-7971**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 25, 2021**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Edward C. Roy, Jr., Esq.**
For Defendant:	**Michael P. Robinson, Esq.**