

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Verizon New England :
v. : A.A. No. 2016 - 054
Department of Labor and Training :

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the Verizon New England's Motion for Stay is hereby DENIED.

Entered as an Order of this Court at Providence on this 27th day of May, 2016.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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FINDINGS & RECOMMENDATIONS

Ippolito, M. Since April 13, 2016, the prodigious telecommunications company Verizon and its regional affiliates (including Plaintiff Verizon New England) have been engaged in a labor dispute with over 39,000 of its employees, members of the International Brotherhood of Electrical Workers (or IBEW). Here in Rhode Island, hundreds of Verizon’s Rhode Island employees have applied for unemployment benefits with Rhode Island’s Department of Labor and Training.

After gathering information from the company and the union representing these workers, a designee of the Director issued a decision on May 5, 2016 finding that the Verizon employees were not subject to disqualification pursuant to Gen. Laws 1956 § 28-44-16, which bars strikers from receiving unemployment benefits.

It may be inferred, though it was not expressly stated, that the Director decided that the dispute had the characteristics of a lockout. Indeed, the only rationale contained in the decision was the following brief and conclusory paragraph:

You are not subject to the disqualification provisions stated above based upon facts submitted to this department. Benefits are allowed if you are otherwise eligible.¹

Accordingly, the Claimants were declared eligible to receive benefits.

Verizon New England responded to the Director's decision by filing in this Court, on May 12, 2016, a pleading unprecedented in our experience — entitled a Verified Complaint for Judicial Review and Stay — through which it prays this Court to stay the effect of the Department's May 5, 2016 award of benefits.² Verizon also filed a Motion For a Stay.³ At the same time a Motion for Admission Pro Hac Vice was filed on behalf of Attorney Arthur Telegen, of Boston.

In its initial filing, Verizon asserts that this Court has been accorded the authority to consider (and grant) its Motion to Stay by the section of the Rhode Island Administrative Procedures Act (APA) pertaining to judicial review, Gen.

¹ Decision of Director, May 5, 2016, at 1.

² Verizon's Verified Complaint, at 4-5, ¶¶ 24-28.

³ The document denominated Verizon's Motion is more accurately labelled its memorandum of fact and law; I shall, from time to time, refer to it as such.

Laws 1956 § 42-35-15.⁴ It adds that the Department’s determination of eligibility was defective both in its form and substance: as to form because the decision did not provide findings of fact, as required under Gen. Laws 1956 § 28-44-41;⁵ and substantively, because it was without a basis in fact.⁶

After it was filed, Verizon’s Motion was referred to me for hearing and the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. A hearing was scheduled for Wednesday, May 18, 2016, at 2:00 p.m. Prior to the time of the hearing, the Department of Labor and Training filed a Motion to Dismiss and Objection to Stay, together with an accompanying Memorandum. The Claimants and the IBEW filed a joint Motion to Intervene and an Objection

⁴ Verizon’s Verified Complaint, at 1, ¶ 3; at 4, ¶¶ 24-25; and at 5, ¶ 27 citing, particularly, subsections § 42-35-15(a) and § 42-35-15(c). These subsections may be reviewed in their entirety, post, at 4.

⁵ Verizon’s Verified Complaint, at 4, ¶¶ 18-19. See also Verizon’s Motion to Stay, at 7. Gen Laws 1956 § 28-44-41(a) provides:

§ 28-44-41. Determinations with respect to labor disputes — (a) In any case in which the payment or denial of benefits will be affected by the provisions of § 28-44-16, the director shall promptly transmit his or her full findings of fact with respect to that section to the board of review or an appeal tribunal designated by it, which, on the basis of the evidence submitted, and that additional evidence as it may require, shall affirm, modify, or set aside those findings of fact and transmit to the director a decision upon the issues involved under that section. ... (Emphasis added).

⁶ Verizon’s Verified Complaint, at 3, ¶¶ 14-15.

to Verizon's Motion to Stay.⁷ The hearing, conducted by the undersigned, proceeded as scheduled. Counsel for Verizon (pro hac vice and local), the Department, and the Board of Review were all present and were heard — as were counsel representing both the Claimants and the IBEW.

Several matters occurred during the hearing which should be recorded here: (1) the Claimants and the IBEW were permitted to intervene; (2) Attorney Telegen's Motion for Admission Pro Hac Vice was granted; (3) the Court learned that the Board of Review hearing in this matter has been scheduled for June 8, 2016 and June 15, 2016;⁸ and (4) Verizon had filed a motion for a stay with the Board of Review earlier that day (May 18, 2016), and it had been immediately denied by the Board. After the hearing, at the Court's invitation, Verizon and Claimants filed supplementary memoranda.

After considering both the oral arguments of counsel and their helpful memoranda, I have concluded that I must recommend against the issuance of a stay (or other injunctive relief) at this time.

⁷ The document denominated Claimants' Objection is also more accurately labeled its memorandum of fact and law; I shall, from time to time, refer to it as such.

⁸ The Court was assured that these were the earliest dates which could accommodate all counsel of record.

I
POSITIONS OF THE PARTIES

A

Verizon New England's Complaint and Motion

1

Jurisdiction

As stated above, Verizon New England urges that subsection 42-35-15(a)⁹ of the APA cloaks this Court with the authority to stay the operation of the Department's May 5, 2016 ruling. Let us review the terms of subsection (a):

(a) Any person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. Any preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency order would not provide an adequate remedy.

Verizon argues that its Motion to Stay is exempted from the provisions of the first sentence of subsection (a) — which requires the exhaustion of all

⁹ Verizon also cites subsection 42-35-15(c), which states:

(c) The filing of the complaint does not itself stay enforcement of the agency order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

Verizon edits the two sentences of subsection (c) to read that the statute “provides that the ‘reviewing court may order, a stay’ of the ‘enforcement of the agency order.’” Verizon's Verified Complaint, at 5, ¶ 27. In my view this provision has little additional substantive content for us to ponder. The issue in the instant case is not the phrasing of an order, but whether this Court possesses the authority to issue it.

administrative remedies before judicial review can be obtained¹⁰ — by the final sentence of subsection (a), which allows action to be taken regarding an agency’s preliminary order, if “review of the final agency order would not provide an adequate remedy.”¹¹

2

The Equitable Test

After this initial discussion of the jurisdictional question, Verizon then enters into a discussion of the four prerequisites for a preliminary injunction — which it assumes are identical to the elements of proof necessary to obtain a stay under § 42-35-15(a).¹² As set out by Verizon, the four elements of the test are:

... whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the potential hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a

¹⁰ Verizon’s Motion to Stay, at 4, citing Richardson v. R.I. Department of Education, 947 A.2d 253, 259 (R.I. 2008)(quoting Arnold v. Lebel, 941 A.2d 813, 818 (R.I. 2007)).

¹¹ Verizon’s Verified Complaint, at 4, ¶ 25, and Verizon’s Motion to Stay, at 4. It is probably worth noting that Verizon does not provide a separate discussion of why “a final agency order” would not furnish it with “an adequate remedy.” But later, in its discussion of irreparable harm, it argues that, since unemployment recipients only have to repay benefits the Department has awarded in limited circumstances, the payment of benefits will prolong this strike and encourage future strikes. Verizon’s Motion to Stay, at 7-8. See discussion, post, at 7.

¹² Verizon’s Motion to Stay, at 5.

preliminary injunction will preserve the status quo.¹³

Verizon then proceeds to address these elements seriatim.

a

Verizon's Likelihood of Success

First, Verizon argues that it is likely to succeed on the merits.¹⁴ It states, in immoderate language, that — “There is not a single fact supporting DLT’s determination that there was a lockout. To the contrary, all evidence supports a finding that there was, and continues to be, a strike.”¹⁵ To bolster these comments, Verizon cited to the account of the events of this dispute which it outlined in its complaint.¹⁶

Although there is no administratively distilled statement of facts (since a contested hearing has not yet been conducted), Verizon nonetheless asserts that, under its view of the facts of the current dispute, the standard for a lockout under § 28-44-16(b) has not been met. It also endeavors to distinguish the case of Robert Derektor of Rhode Island, Inc. v. Employment Security Board of Review, Department of Employment Security, in which a finding of an actual

¹³ Verizon’s Motion to Stay, at 5, quoting Iggy’s Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999).

¹⁴ Verizon’s Motion to Stay, at 5-7.

¹⁵ Verizon’s Motion to Stay, at 5.

¹⁶ Verizon’s Motion to Stay, at 5-6.

lockout was affirmed by our Supreme Court.¹⁷ Finally (as to this first element), Verizon argues that the circumstances of the current dispute are not comparable with those which were present during its 2011 clash with the same union.¹⁸

b

Irreparable Harm

Secondly, Verizon avers that, in the absence of a stay, it will suffer irreparable harm.¹⁹ It argues that because it is unlikely that its employees will ever have to repay the benefits that they are now receiving, the dispute now underway will be prolonged, and future disputes will be encouraged.²⁰

c

Balancing the Equities

Thirdly, Verizon argues that the balance of equities tip in its favor.²¹ As to itself, Verizon states, without additional discussion, that it will endure irreparable

¹⁷ Verizon's Motion to Stay, at 6-7 citing 572 A.2d 58, 60 (R.I. 1990).

¹⁸ Verizon's Motion to Stay, at 7. It may be worth noting that, while the Department initially disqualified the Claimants, the Board of Review awarded benefits, finding a lockout. This decision was affirmed in Verizon New England v. Department of Labor and Training, Board of Review, A.A. No. 12-131, slip op. at 2-3, 8 (Dist.Ct. 01/10/2014)(Jabour, J.). For clarity's sake, this case will be cited as Verizon (2014).

¹⁹ Verizon's Motion to Stay, at 7-8.

²⁰ Verizon's Motion to Stay, at 7.

²¹ Verizon's Motion to Stay, at 8.

harm without a stay.²² It urges that no harm will befall the Department if a stay is issued, since, if Verizon prevails, the amounts paid will be drawn from the Department's revolving fund.²³ Regarding the Claimants, Verizon dismissively states that they "cannot credibly argue that they are harmed by a suspension of unemployment benefits to which they are not legally entitled."²⁴ Finally, Verizon urges that the public interest will be served because, if a stay is granted, there will be a disincentive for future strikes.²⁵

d

Preserving the Status Quo

Fourthly, Verizon argues that the issuance of a stay will preserve the status quo.²⁶

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Verizon's Motion to Stay, at 8-9 citing E.M.B. Associates v. Sugarman, 118 R.I. 105, 108, 372 A.2d 508, 509 (1977).

B

The Department of Labor and Training's Motion to Dismiss²⁷

The Department of Labor and Training argues that the instant action is premature.²⁸ It urges that, before judicial review can occur, the Board of Review must be allowed to perform its statutory duty, of conducting a de novo hearing into the merits of the Verizon employees' claim for benefits;²⁹ and it must be permitted to issue a decision, affirming or reversing the Director's May 5, 2016 ruling; only then may any aggrieved party seek judicial review in the District Court.³⁰ And, the Department reminds us that judicial review is restricted to questions of law, as long as the findings of fact made by the Board are supported by substantial evidence of record.³¹

Next, the Department argues that the instant matter is not ready for judicial review because Verizon has not exhausted its administrative remedies as

²⁷ It may be noted that the Department's arguments are confined to the issue of jurisdiction, broadly defined — including assertions that the matter is neither ripe for review nor reviewable, in a practical sense. The Department does not comment on the elements of the equitable test.

²⁸ Department's Memorandum in Opposition to Plaintiff's Complaint and Motion for a Stay, at 2.

²⁹ Department's Memorandum, at 3, citing Gen. Laws 1956 § 28-44-39 and Gen. Laws § 28-44-41.

³⁰ Department's Memorandum, at 3, citing Gen. Laws 1956 § 28-44-52 and Gen. Laws § 28-44-54.

³¹ Department's Memorandum, at 3.

required by § 42-35-15(a);³² and neither is it appealing from a final order, which in this case must be issued by the Board of Review.³³ Moreover, it argues that there is no record to submit, because there has not yet been a contested hearing in the matter.³⁴ The Department argues that the documents filed by Verizon in this case do not constitute a “record;” to the contrary, the “record” must be created by the Board of Review, which the Board will do when it conducts a de novo hearing in this matter.³⁵

The Department also asserts that Verizon cannot establish irreparable harm (in the absence of a stay) because, if Verizon is successful at the Board of Review hearing, the benefits paid to its employees will not be charged to its account and its experience rate will not be affected.³⁶

The Department additionally responds to Verizon’s criticism that the Director’s ruling decision did not meet the standards established in § 28-44-41, because it did not include sufficient findings of fact. It argues alternatively that it

³² Department’s Memorandum, at 5.

³³ Department’s Memorandum, at 5, citing § 28-44-52 and § 28-44-41. It should be noted that the vast majority of appeals filed with the Board of Review are, in the first instance, assigned to a hearing officer known as a Referee, for hearing and decision. But, under § 28-44-41, the Referee hearing is omitted in labor dispute cases.

³⁴ Department’s Memorandum, at 5, citing § 42-35-15(d).

³⁵ Department’s Memorandum, at 6.

³⁶ Department’s Memorandum, at 5-6.

did supply an explanation of its decision, and if it did not, the Board of Review has the authority to remand the matter back to the Department for further findings to be made.³⁷

C

The Objection of Claimants/the IBEW

The IBEW, which intervened on its own behalf and on behalf of the individual Claimants, filed an Objection (in the form of a memorandum) which contains three main points opposing Verizon's request for a stay — first, that it failed to exhaust its administrative remedies;³⁸ second, that granting the Motion would violate our state's "Norris-LaGuardia" Act;³⁹ and third, that Verizon's Motion does not meet the equitable grounds for a stay.⁴⁰

1

The Exhaustion Doctrine

Claimants urge that this Court may not consider Verizon's Motion because the company has not exhausted the available administrative remedies and it has not shown that it should be exempted from that requirement on the ground that doing so would be futile.

³⁷ Department's Memorandum, at 6, citing § 28-44-41.

³⁸ Claimants' Memorandum, at 2-5.

³⁹ Claimants' Memorandum, at 5-7.

⁴⁰ Claimants' Memorandum, at 7-15.

Claimants begin their discussion on this topic by presenting our Supreme Court’s teaching regarding the exhaustion doctrine — first citing cases in which the requirement of exhaustion has been recognized;⁴¹ then citing others in which the Supreme Court’s “preference for proceeding with an administrative appeal through judicial review as opposed to instituting a separate action” has been declared;⁴² and finally they quote from a 2002 decision⁴³ in which our Supreme Court declared that the (exhaustion) rule has two purposes — “(1) it aids judicial review by allowing the parties and the agency to develop the facts of the case, and (2) ‘it promotes judicial economy by avoiding needless repetition of administrative and judicial fact, perhaps avoiding the necessity of judicial involvement.’ ”⁴⁴

Claimants then assert that Verizon has not shown that its Motion falls within the futility exception to the exhaustion rule, because, if the employer prevails before the Board of Review, it will be held financially harmless within the

⁴¹ Claimants’ Memorandum, at 2, citing Arnold v. Lebel, 941 A.2d 813, 818 (R.I. 2007)(quoting Rhode Island Employment Security Alliance, Local 401, SEIU v. State Department of Employment and Training, 788 A.2d 465, 467 (R.I. 2002)).

⁴² Claimants’ Memorandum, at 2-3, citing Mall at Coventry Joint Venture v. McLeod, 721 A.2d 865, 870 (R.I. 1998)(citing Greenwich Bay Yacht Basin Associates v. Brown, 537 A.2d 988, 993 (R.I. 1988)).

⁴³ Claimants’ Memorandum, at 3, citing Rhode Island Employment Security Alliance, Local 401, SEIU v. State Department of Employment and Training, 788 A.2d 465 (R.I. 2002).

⁴⁴ Claimants’ Memorandum, at 3, citing SEIU, ante, 788 A.2d at 467 (quoting Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992)).

unemployment system.⁴⁵ At this juncture Claimants remind us that this Court is empowered only to provide judicial review of the decisions of the Board of Review, not the rulings of the Department's Director.⁴⁶

Claimants supplement their exhaustion argument by asserting that Verizon's request for a stay should be denied because it first failed to request a stay from the Board of Review.⁴⁷ To this end, they cite a number of sister-state cases which indicate that such an omission is fatal to a stay request made to a superior tribunal.⁴⁸ A case to the same effect emanating from the Rhode Island

⁴⁵ Claimants' Memorandum, at 4. Claimants allude here to the fact that, if it prevails, Verizon's experience rate cannot be affected. Instead, the cost of providing benefits to its employees will be borne by the revolving fund.

⁴⁶ Claimants' Memorandum, at 4. Claimants cite Owner-Operators Independent Drivers v. State of Rhode Island, 541 A.2d 69 (R.I. 1988) on this point. In Owner-Operators the Court affirmed the Superior Court's rejection of Plaintiff's request for a permanent injunction against the collection of all fuel-use-decal fees, a judgment that the fees were unconstitutional, and a refund of all such fees paid. 541 A.2d at 70-74. It remanded the case back to the tax division for a hearing, noting that any judicial review was within the jurisdiction of the District Court, which did have the authority to employ an equitable tax remedy, as part of its ultimate disposition of the case. 541 A.2d at 73 citing Pucci v. Algieri, 106 R.I. 411, 261 A.2d 1 (1970). The case did not stand for the proposition that the District Court could issue an interlocutory stay.

⁴⁷ Claimants' Memorandum, at 4-5.

⁴⁸ Claimants' Memorandum, at 5. As stated above, at the May 18, 2016 hearing it was reported to the Court that, earlier that day, a stay had been requested, but denied by the Board.

Superior Court is also relied upon by Claimants.⁴⁹

2

The R.I. Norris-LaGuardia Act

Claimants' second argument is that a stay in the instant case would violate Gen. Laws 1956 § 28-10-2, which it calls our State's "Norris-LaGuardia" Act, and which generally prohibits Rhode Island's state courts from issuing stays or restraining orders in any case "involving" a labor dispute.⁵⁰

3

The Equitable Test

Claimants' third argument is that Verizon cannot satisfy the four preconditions to the granting of a stay, under which, the movant must make a "strong showing" that:

(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.⁵¹

⁴⁹ Claimants' Memorandum, at 5, citing Beaven v. North Kingstown Planning Commission, 2004 WL 2819166 (October 18, 2004).

⁵⁰ Claimants' Memorandum, at 5-6. Claimants quote from Almac's v. R.I. Grape Boycott Committee, 110 R.I. 36, 43, 290 A.2d 52, 56 (1972), the Court's determination that "involving" should be read broadly and "as being synonymous with or having the same connotations as 'relating to' or growing out of.'" Claimants' Memorandum, at 6.

⁵¹ Claimants' Memorandum, at 7, citing Narragansett Electric Company v. Harsch, 367 A.2d 195, 197 (R.I. 1976).

Claimants urge that while Verizon must satisfy all of these criteria to prevail, it cannot satisfy any.⁵²

a

Verizon's Likelihood of Success on the Merits

Claimants allege that it is impossible for Verizon to predict that it is likely to prevail on the merits because, to do so, it must show that the Board of Review's findings are not supported by substantial evidence of record; and this it cannot do, because the Board has not yet made findings.⁵³ Claimants then itemize what they assert to be evidence that Verizon has engaged in a physical lockout of its workers.⁵⁴ To this end, Claimants rely upon a 2014 decision of this Court, Verizon New England v. Department of Labor and Training Board of Review,⁵⁵ in which the Court upheld a decision of the Board of Review which found that Verizon's conduct during a 2011 labor dispute involving the IBEW constituted a lockout.⁵⁶ Claimants urge that Verizon's conduct during the current labor dispute is consistent with that found sufficient to affirm the Board of Review's finding of

⁵² Claimants' Memorandum, at 7.

⁵³ Claimants' Memorandum, at 7.

⁵⁴ Claimants' Memorandum, at 8-9.

⁵⁵ Claimants' Memorandum, at 7-8 citing A.A. No. 12-131, slip op. at 2-3, 8 (Dist.Ct. 01/10/2014)(Jabour, J.). This case will be cited as Verizon (2014).

⁵⁶ Id.

a lockout in Verizon (2014).⁵⁷ And so, Claimants submit, Verizon cannot be sure that it will prevail.⁵⁸

Claimants further present a secondary theory upon which the Board might well deem them to be eligible for benefits — i.e., that there is, at present, no work available for them.⁵⁹ In support of this theory Claimants allege that there is no work available for the strikers in Rhode Island, though work has been offered in Taunton, Massachusetts.⁶⁰ Claimants urge that work in Taunton would be far enough removed from their residences in Rhode Island, as to be considered to be unsuitable.⁶¹

b

Irreparable Harm

On the second prong of the equitable test, Claimants argue that Verizon has not shown that it will endure irreparable harm if its Motion to Stay is not granted.⁶² Indeed, they term Verizon’s assertion “absurd,” because Verizon is an insured employer which, if it ultimately prevails, will not suffer any financial

⁵⁷ Claimants’ Memorandum, at 8-9.

⁵⁸ Claimants’ Memorandum, at 7-9.

⁵⁹ Claimants’ Memorandum, at 9-10.

⁶⁰ Claimants’ Memorandum, at 10.

⁶¹ Claimants’ Memorandum, at 10.

⁶² Claimants’ Memorandum, at 10-12.

impact as a result of the payments made to its employees.⁶³ And Claimants also find implausible Verizon's notion that the payment of benefits will prolong the dispute, since, out of 39,000 workers involved in the dispute, only 850 work in Rhode Island.⁶⁴ Claimants also cite cases in which Courts have held that the payment of unemployment benefits does not necessarily prolong a labor dispute.⁶⁵

c

Harm to the Public Interest

On the third element of the test, Claimants argue that the issuance of a stay will harm the public interest because it will foster increased economic insecurity, and tend to increase reliance upon the public fisc.⁶⁶ They further urge that this policy of encouraging unemployment benefits is reflected in the legislatively pronounced policy mandating the payment of benefits during an employer's appeal.⁶⁷

⁶³ Claimants' Memorandum, at 10.

⁶⁴ Claimants' Memorandum, at 11.

⁶⁵ Claimants' Memorandum, at 11-12. The most recent case cited is USX Corporation v. Pennsylvania Department of Labor and Industry, 643 F. Supp. 1567 (M.D. Pa. 1986).

⁶⁶ Claimants' Memorandum, at 12-14, citing USX Corporation, ante, 643 F. Supp. at 1574-75.

⁶⁷ Claimants' Memorandum, at 14, citing Gen. Laws 1956 § 28-44-40.

d

Preserving the Status Quo

Regarding the fourth prong of the equitable test, Claimants take exception to Verizon's statement that its motion would preserve the status quo, when, in fact, its motion would reinstate conditions which have passed.⁶⁸

D

Supplemental Memoranda

As noted ante, when, at the conclusion of the May 18 hearing, the Court inquired whether Verizon was aware of any cases in which a Court had stayed the receipt of unemployment benefits during a labor dispute, before the issuance of the final agency decision, it asked for leave to file an additional memorandum, which the Court granted, setting a deadline of 4:30 p.m. on Friday May 20, 2016 for the filing of additional materials. Two parties, Verizon and the Claimants, availed themselves of the opportunity to do so.

1

Verizon's Supplemental Memorandum

In its Supplemental Memorandum, Verizon makes three points —

First, in answer to the Court's query, it cites a 1956 case decided by the Supreme Court of Pennsylvania, Pennsylvania State Chamber of Commerce v.

⁶⁸ Claimants' Memorandum, at 15.

Torquato,⁶⁹ as an instance in which a Court has granted a stay of an award of benefits; and, without discussion of the pertinent Pennsylvania statute, Verizon proffered that the Pennsylvania Court found that a reversal of the agency decision “would not make the employer whole because ‘unemployment compensation payments to the claimants [likely] will never be recovered.’”⁷⁰

In its Supplemental Memorandum Verizon reiterates its reliance upon subsections 42-35-15(a) and (c) as empowering the Court to issue the requested stay;⁷¹ and it describes Rhode Island Chamber of Commerce v. Hackett,⁷² as holding that “the fact that a final adjudication may reverse employer charges for unemployment compensation wrongly assessed is not determinative of a stay which will protect a different employer interest.”⁷³

⁶⁹ Verizon’s Supplemental Memorandum, at 1, citing Pennsylvania State Chamber of Commerce v. Torquato, 386 Pa. 306, 125 A.2d 755 (1956).

⁷⁰ Verizon’s Supplemental Memorandum, at 1, quoting Pennsylvania State Chamber of Commerce v. Torquato, 386 Pa. at 327, 125 A.2d at 765.

⁷¹ Verizon’s Supplemental Memorandum, at 1.

⁷² Verizon’s Supplemental Memorandum, at 1-2, citing Rhode Island Chamber of Commerce v. Hackett, 122 R.I. 686, 411 A.2d 300 (1980).

⁷³ Verizon’s Supplemental Memorandum, at 1-2, citing Chamber of Commerce v. Hackett, 122 R.I. at 689, 411 A.2d at 302.

And finally, Verizon repeats its assertion that the Director’s May 5 decision was flawed, as it did not include findings worthy of the designation — “full findings of fact” — as that term is used in § 28-44-41.⁷⁴

2

Claimants’ Supplemental Memorandum

In their Supplemental Memorandum, Claimants also make three points.

First, Claimants reassert that Verizon has not demonstrated that, in the absence of a stay, it will suffer irreparable harm.⁷⁵ Under this heading, Claimants also attempt to distinguish the case cited in Verizon’s Supplemental Memorandum — Pennsylvania State Chamber of Commerce v. Torquato. Claimants urge that the case is distinguishable because the “[s]tatutory provisions then in effect would have led to complete disbursement of the eligible funds before review could be obtained in the appellate court. The Pennsylvania Supreme Court presumed irreparable injury from this fact alone but it also noted that the employer’s reserve account would be depleted.”⁷⁶ And so, because the Rhode Island unemployment system will hold Verizon harmless, if it prevails,

⁷⁴ Verizon’s Supplemental Memorandum, at 2.

⁷⁵ Claimants’ Supplemental Memorandum, at 1-2 citing Paolissi v. Fleming, 602 A.2d 551 (R.I. 1992) and In re State Employees’ Unions, 587 A.2d 919, 925 (R.I. 1991).

⁷⁶ Claimants’ Supplemental Memorandum, at 2-3 quoting USX Corporation, ante, 643 F. Supp. at 1573.

Claimants argue that the case cited is distinguishable and without precedential value.⁷⁷

Claimants also argue that Verizon's assertion that there are no contested facts in this matter is simply inaccurate.⁷⁸ In particular, it restates the argument (made in its original brief) that suitable work is not available to them.⁷⁹

Finally, Claimants argue in their Supplemental Memorandum that Verizon is not trying to preserve the status quo (in which Claimants are receiving benefits) but to return to the status quo ante (in which benefits had not yet been awarded).⁸⁰ This, it submits, is not the function of a stay.⁸¹

⁷⁷ Claimants' Supplemental Memorandum, at 3.

⁷⁸ Claimants' Supplemental Memorandum, at 3.

⁷⁹ Claimants' Supplemental Memorandum, at 3.

⁸⁰ Claimants' Supplemental Memorandum, at 3.

⁸¹ Claimants' Supplemental Memorandum, at 3 citing Paolissi v. Fleming, 602 A.2d 551, 551 (R.I. 1992)

II
ANALYSIS
A
Jurisdiction

Before we may address the substantive merits of the instant stay request, we must satisfy ourselves of this Court’s authority to act in this matter — *i.e.*, to stay the decision of the Director before the case proceeds to the Board of Review pursuant to Gen. Laws 1956 § 28-44-46. As stated above, Verizon urges that this Court possesses the authority to issue stays with regard to preliminary administrative decisions. The IBEW, the Claimants, and the Department of Labor and Training urge that we do not.

1
Section 28-44-52

While § 42-35-15, which has been much discussed in the memoranda submitted in this case, describes the parameters of our review, it is § 28-44-52⁸²

⁸² Gen Laws 1956 § 28-44-52 provides:

28-44-52. Finality of board’s decision — Petition for judicial review — Each party shall be promptly furnished a copy of the decision and the supporting findings and conclusions of the board of review. The decision shall be final unless any party in interest, including the director, initiates judicial review by filing a petition with the clerk of the sixth division of the district court within thirty (30) days as set forth in the Administrative Procedures Act, chapter 35 of title 42. The petition for review shall state the grounds upon which review is sought but need not be verified. Exceptions taken to the rulings of the board of

which vests this Court with the authority to review contested unemployment claims by stating that the decision of the Board of Review is final unless a petition is filed with the clerk of this Court.⁸³ And so, by the plain and ordinary meaning of the language contained in § 28-44-52, this Court only has jurisdiction to review Board of Review decisions; and no power regarding decisions of the Director. I believe this remains a directive that we are bound to follow.

As a result, I need not reach § 42-35-15(a) and Verizon's assertion that § 42-35-15(a) grants the District Court the authority to review preliminary orders (albeit only in greatly proscribed circumstances). Given the language of § 28-44-52 — and in the absence of a declaration from our Supreme Court that we have such authority — I believe this Court should not gather unto itself powers not expressly assigned to it, legislatively or judicially.⁸⁴

review shall not be necessary to obtain judicial review nor shall a bond be required either as a condition of initiating a proceeding for judicial review of a determination of benefit rights or of entering an appeal from the decision of the court upon that review. (Emphasis added).

⁸³ Gen Laws 1956 § 28-44-52, ante, n. 82.

⁸⁴ Parenthetically, it may be noted that it is almost forty years since this Court was given the responsibility to hear unemployment appeals in the public laws of 1956.

Section 42-35-15

Of course, Verizon has argued that § 42-35-15(a),⁸⁵ which generally limits judicial review to those persons who have “exhausted all administrative remedies available to him or her within the agency” and who have received a “final order” from the agency, also authorizes judicial review of a preliminary agency ruling if, and only if, a final agency order would not provide an adequate remedy; this is known as the futility requirement. And while I do not accept Verizon’s theory of our jurisdiction — in light of the plain language of § 28-44-52 — I must acknowledge that our Supreme Court has not spoken on the issue. And so, in the interests of providing the District Court with the fullest possible findings and recommendations regarding the instant motion, I shall offer further analysis predicated on the assumption that this Court is indeed authorized to consider the Motion to Stay.

⁸⁵ For the convenience of the reader, we shall reprint § 42-35-15(a) here:

(a) Any person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. Any preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency order would not provide an adequate remedy.

But, even if we assume, for the sake of argument only, that § 42-35-15 authorizes this Court to stay a preliminary administrative ruling, we can only do so if Verizon has proven that it falls with the futility exception to the rule requiring exhaustion of administrative remedies. It must demonstrate that a favorable Board of Review decision would not provide it with an adequate remedy. And, in my view, it has not shown inadequacy of remedy; as a result, it has not shown futility.

The Department has declared that, if Verizon prevails at the hearing before the Board, it will suffer no ill consequences of a financial nature with regard to the Rhode Island unemployment system. Let us explain why this is so.

For the most part, the unemployment-benefit program operates like an insurance system — employers pay contributions (which are certainly not voluntary and which are properly considered to be taxes) to the Department of Labor and Training.⁸⁶ The amount of these contributions is based on the size of the employer’s payroll⁸⁷ and its “experience rate”⁸⁸ — which is determined by the

⁸⁶ Governmental and charitable employers are permitted to — but not required to — participate in the unemployment system as self-insurers. Any unemployment benefits distributed to their former employees must be repaid to DLT on a dollar-for-dollar basis, without reservation; so that even if the claim is later overruled by the Board of Review or a Court, the monies paid cannot be recouped to the employer.

⁸⁷ The size of the employer’s payroll — for purposes of the Employment Security Act — is designated its “taxable wage base.” Gen. Laws 1956 § 28-43-7(b).

employer's unemployment experience (i.e., the number of its former workers who have collected benefits). These contributions become the corpus of what is known as the "balancing account."⁸⁹ And within the balancing account, each employer has its own "employer's account."⁹⁰ The bottom line is that if a firm's former employee is awarded benefits, the employer's contribution rate may increase, but benefits will come from the account. But, if a claim is ultimately disallowed, Verizon, or any insured employer, is held harmless. Any benefits paid are ascribed to the Department's revolving fund, and its experience rate will not be affected.

Verizon does not challenge the truth of this. Instead, it argues that a future favorable ruling from the Board of Review will not undo the harm caused by the fact that its employees are collecting benefits during the ongoing labor dispute. As related ante, Verizon has asserted that payment of benefits to its employees will extend the dispute. And it is only in this indirect (and contorted) sense that Verizon argues that it comes within the futility exception to the rule requiring exhaustion of administrative remedies.

I am not persuaded by this argument. I find Verizon's assertions that

⁸⁸ Gen. Laws 1956 §§ 28-43-1(5) and 28-43-8.

⁸⁹ Gen. Laws 1956 §§ 28-43-1(1) and 28-43-2.

⁹⁰ Gen. Laws 1956 §§ 28-43-1(4) and 28-43-3, 28-43-4, and 28-43-5.

unemployment payments made to its employees will have, in the future, an adverse impact on the labor dispute now underway to be speculative, at best. For instance, at no time has it been represented to this Court that Verizon's Rhode Island employees, of whom there are fewer than 900, who are receiving benefits, are capable of bargaining separately from the larger group of workers, numbering nearly 39,000, who are not. It has not been explained how a smaller group of workers can affect the bargaining position of the larger. Rhode Island's Verizon workers cannot make a separate peace, or fight a separate war.

And no expert opinions have been offered to validate the truth of Verizon's assumption that the receipt of unemployment benefits by its employees will extend the current labor dispute. There is no basis upon which this Court may make such a finding.

Moreover, Verizon's filings have not presented case law wherein indirect or ancillary effects were deemed sufficient to trigger the futility exception. I regard it as a common sense reading of the statute that inadequacy of remedy is an inquiry which should focus primarily, if not exclusively, upon the direct consequences to the parties regarding the administrative issue at hand — which in this case is the payment of unemployment benefits and the financial impact that a favorable or unfavorable decision will have on Verizon.

I must therefore conclude that, even if we assume, as Verizon urges, that this Court has jurisdiction, under § 42-35-15(a), to act equitably with regard to the ruling made by the Director, we nevertheless cannot do so in the instant case — because Verizon has failed to demonstrate inadequacy of remedy; therefore, it may not be excused from its duty to exhaust all administrative remedies.

B

The Four-Prong Standard for Equitable Action

Having found we are not authorized to act on the instant motion, we could, quite properly, end our analysis and refrain from commenting on the remaining substantive questions about which the parties have joined issue. However, I shall not do so. Instead, I shall make brief comment upon each of the four elements which must be proven if a movant is to obtain equitable relief, as formulated in Iggy's Doughboys.⁹¹

⁹¹ For the convenience of the reader, I shall reprint the four elements here: ... whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the potential hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.
Iggy's Doughboys, ante at 7, n. 13, 729 A.2d at 705

Likelihood of Success on the Merits

Verizon’s self-assured (and self-serving) predictions of its ultimate success in this matter before the Board of Review may well prove to be true, or they may be proven false; because, at this juncture, any opinion on the question at this point constitutes unmitigated speculation. It is not only difficult, but truly impossible for this Court to prognosticate on this question, because we do not know what evidence and testimony will be produced at the de novo Board of Review hearing. The data points which Verizon asks us to treat as the “facts” of the case are merely the product of the loosest kind of non-adversarial inquiry, an undigested jumble.

We also know that the Claimants do not concede to the accuracy of their employer’s version of the facts of the current dispute. It is clear that Claimants and the IBEW will attempt to convince the Court that the holding in Verizon (2014),⁹² in which the Board’s award of benefits was affirmed by this Court, should be controlling. While Verizon does not concede to the correctness of that decision, it is this Court’s last word on the subject of lockouts, whether physical or constructive. As such, the Director and the Board are bound to give the

⁹² See discussion, ante, at 16-17.

principles espoused therein due deference, until such time as our Supreme Court provides further guidance.

We are also informed that Claimants shall assert before the Board of Review that suitable work is unavailable to them in Rhode Island. They assert that there is no work in Rhode Island and that the closest work available is in Taunton, Massachusetts. They suggest that work at that location may well be unsuitable, for some, if not all, of the Rhode Island Claimants.⁹³ Obviously, such an issue will require fact-finding on a claimant-by-claimant basis.

2

Irreparable Harm to Verizon

This element bears a certain resemblance to the § 42-35-15(a) requirement of futility — *i.e.*, that the ultimate remedy will be inadequate. And so, much of the same material deemed pertinent to that question is also relevant here — such as the fact that Verizon will be held harmless, financially speaking, by the Department if it ultimately prevails in its effort to have the Claimants determined

⁹³ Unsuitability is a concept litigated under Gen. Laws 1956 § 28-44-20, regarding the obligation of an unemployment-benefit recipient to accept suitable work. The commuting distance to a position has been recognized as a factor which can make a job unsuitable. Whether the distance to Taunton would justify the rejection of such work by a Claimant who lives in East Providence is one question; whether it would justify the rejection of such work by a Westerly resident is another. We leave the resolution of these issues for another day.

to be disqualified from the receipt of benefits under § 28-44-16. On this basis alone, irreparable harm cannot be shown.⁹⁴

3

The Balance of the Equities

This element has clearly not been met by Verizon. Rightly or wrongly, it is clear that Claimants will incur substantial harm if their benefits are eliminated. By blithely stating that the Claimants have no right to benefits, so they have no right to complain about being stripped of them, Verizon avoided having to confront this issue. But this logic is nothing more than bootstrapping, a practice in which this Court may not engage.

On the other hand, we have Verizon's assertion that it will be harmed because the payment of benefits will prolong the current labor dispute and tend to precipitate others in the future — a notion we have deemed unproven. This position (as to future strikes) was rejected as “mere speculation” by our Supreme

⁹⁴ See New England Telephone and Telegraph v. Fascio, 105 R.I. 711, 717-18, 254 A.2d 758, 762 (1969), our Supreme Court held that where strikers benefits were being attributed to the “solvency fund,” the decision to award benefits “imposed no direct burden or obligation of a substantial nature upon petitioner.” As a result, the employer was deemed not to be an aggrieved person (with standing to appeal) under § 42-35-15(a).

We may also note that, in USX, *ante*, 643 F. Supp at 1574, a finding that the employer would be held harmless by the State if an award of benefits is ultimately overruled, was deemed sufficient, *per se*, to preclude a finding of irreparable harm.

Court many years ago in New England Telephone and Telegraph v. Fascio.⁹⁵ Verizon's need for a stay is also mitigated by the fact that the Board of Review has scheduled a prompt hearing in this matter, on a date less than two weeks away.

Regarding the public interest generally, harm to the public interest (from the issuance of the stay) is speculative. If any harm results, it will come in the form of a lack of confidence in the claim adjudication system, at seeing a decision rendered by the duly appointed executive department official being vacated outside of the normal statutory process, without the benefit of superseding fact-finding.

Regarding the Board of Review, specifically, there could be great harm. The issuance of a stay at this time, in the absence of fact-finding, would have to be regarded by the Board (and all interested parties) as a signal as to the manner in which the Board should rule at the upcoming hearing. Any decision which the Board, a quasi-judicial body,⁹⁶ might thereafter make in Verizon's favor would be tainted in the eyes of many.

⁹⁵ New England Telephone and Telegraph v. Fascio, ante n. 94, 105 R.I. at 718, 254 A.2d at 762, calling such a theory "so lacking in reasonable certainty and in substance as to compel us to conclude that the argument in this case is without merit." Id.

⁹⁶ See Newman-Crosby Steel, Inc. v. Fascio, 423 A.2d 1162, 1166 (R.I. 1980).

Therefore, I must find that the balance of equities must be resolved in favor of the Claimants.

4

Preservation of the Status Quo

Verizon argues that this element really means to preserve the status quo or return the parties to the last peaceable status prior to the controversy.⁹⁷ The case Verizon cites, E.M.B. Associates v. Sugarman, involved a non-compete clause in a purchase and sale agreement of a mortuary.⁹⁸ And the order issued, which was upheld, involved the removal of a name plate (of a name associated with the prior business) from the exterior of the new chapel.⁹⁹

Quite simply, the Director of the Department of Labor and Training is a high official within the Executive Department of our state government, “considered to be the guardian of the public interest in the area of employment security,”¹⁰⁰ who issued (or authorized a designee to issue) a decision pursuant to his statutory authority. He has done nothing outside his area of responsibility,

⁹⁷ Verizon’s Motion to Stay, at 8-9 citing E.M.B. Associates v. Sugarman, 118 R.I. 105, 108, 372 A.2d 508, 509 (1977).

⁹⁸ E.M.B. Associates, 118 R.I. at 108, 372 A.2d at 509.

⁹⁹ E.M.B. Associates, id.

¹⁰⁰ Newman-Crosby Steel, 423 A.2d at 1166. See also Renza v. Murray, 525 A.2d 53, 56 (R.I. 1987).

nothing to disrupt the peace (whether his decision is ultimately sustained or overruled). There is no “peaceable” status to which we must return.

5

Resolution

Based on the foregoing analysis, I must conclude that, applying the four-part equitable test which Verizon has drawn from Iggy’s Doughboys, ante, Movant has not justified its request for the issuance of a stay.

C

Other Considerations

In considering this unprecedented motion, I have gone to great lengths to set out the positions of the parties — which was done in lieu of our customary practice, which is to set out the facts of record at great length. This was necessary because we have received no “facts of record,” no distillation of the events of the controversy, as we normally are given in agency appeals. The positions of the parties are really the only “facts” we have to work with — just them, and the applicable law.

We have determined that in order to obtain the relief it seeks, Verizon must clear five legal hurdles — namely, jurisdiction (i.e., the authority to act) and the four elements of the equitable test. This is the normal way lawyers and judges

proceed: element-by-element. Doing so, we have found that Verizon has not been able to negotiate all of these obstacles.

But there is another way to approach this case — which is to step back and see the whole forest, not just the five trees. We can also evaluate the merits of Verizon’s Motion by taking a more holistic approach, which is to examine cases in which such extraordinary relief has been granted; or rejected. And try to perceive a common theme.

As part of my work in this case, I have reviewed a representative sample of our Supreme Court’s administrative-stay case law. I have concluded that it is the nature of the issue presented that trumps all other criteria in determining whether the exhaustion requirement will be waived — if it is a pure issue of law, absent factual disputes, an injunction may well issue. Successful cases (i.e., cases which the Court agrees to hear) often,¹⁰¹ though not always,¹⁰² come in the form of a

¹⁰¹ See M.B.T. Construction v. Edwards, 528 A.2d 336, 337-38 (R.I. 1987)(Owner of Newport condominium brought action to declare two elements of the Newport zoning code to be void, as violating state statute; judgment for plaintiffs affirmed, where administrative exhaustion would have been futile, since zoning Board of Review had no power to declare section of the code void)(citing Frank Ansuini v. City of Cranston, 107 R.I. 63, 73, 264 A.2d 910, 915-16 (1970) and Arnold v. Lebel, 941 A.2d 813, 817-18 (R.I. 2007)(Supreme Court upheld Superior Court’s exercise of jurisdiction over Declaratory Judgment action brought by Medicaid applicants, pending Department of Human Services hearing, who sued to declare DHS hearing officers’ practice of communicating with certain agency officials unlawful). See also Burns v. Sundlun, 617 A.2d 114 (R.I. 1992). Cf. Owner-Operators, ante, at 14, n. 46,

request for declaratory judgment. Cases where facts must be found as to particular applicants have not been accommodated in this manner.¹⁰³

In affirming a declaratory judgment voiding a section of the Newport zoning code, Justice Shea stated the point of demarcation between cases that require exhaustion of administrative remedies and those which do not:

If plaintiff was seeking a reversal of a ruling by the building inspector based on an erroneous interpretation of the ordinance, which relief the board of review has the power to grant, then the exhaustion-of-administrative remedies rule would have required an appeal to the board. That is not the case before us, however. Here plaintiff seeks a ruling about the validity and enforceability of § 1276.07 itself. The board does not have the authority to consider

wherein our Supreme Court, while upholding the dismissal of a Superior Court suit to (1) declare the fuel-tax decal fee statute unconstitutional, (2) enjoin the collection of the tax, and (3) obtain refunds of the fee, nonetheless commented that, if the matter had been brought solely as a declaratory judgment action to void the statute, under Gen. Laws § 9-30-1, it may have been allowed.

¹⁰² See Rhode Island Chamber of Commerce v. Hackett, ante at 20, n. 72, 122 R.I. at 687-88, 411 A.2d at 301-02 (In the wake of the great blizzard of 1978, the Governor authorized the Director of Employment Security to declare the normal 7-day waiting period suspended; Director did so for all claimants in 1978, not just those unemployed as a result of the storm; Supreme Court affirms Superior Court's decision voiding the regulation, as conflicting with state law).

¹⁰³ E.g. Rhode Island Employment Security Alliance, Local 401, SEIU v. State Department of Employment and Training, 788 A.2d 465, 467-68 (R.I. 2002)(DLT employees who alleged their pay classifications were lower than those of others in state government with similar authority and responsibility brought suit for declaratory, compensatory and injunctive relief; dismissal for failure to exhaust administrative remedies under the Merit System Act upheld where plaintiffs assertions of futility belied by fact that some of plaintiffs did receive upgrades); M.B.T. Construction, ante, at 36, n. 101, 528 A.2d at 337-38.

that question.¹⁰⁴

In the instant case, Verizon is not challenging the validity of any law.¹⁰⁵ From the arguments it has presented to this Court, it seems to be more than satisfied with Rhode Island's statute relating to the eligibility of one involved in a labor dispute to receive unemployment benefits — *i.e.*, § 28-44-16.¹⁰⁶ It simply believes it has been applied erroneously by the Director.

But, where a factual question is posed, exhaustion should not be waived.¹⁰⁷ And despite Verizon's protestations to the contrary — *i.e.*, that there is no factual dispute in this case — the issue of an individual claimant's eligibility for benefits is always a mixed question of fact and law.¹⁰⁸

¹⁰⁴ M.B.T. Construction, *ante*, 528 A.2d at 337-38.

¹⁰⁵ Neither is it challenging an advisory ruling, as was the plaintiff in Chamber of Commerce v. Hackett, *ante* at 37, n. 102.

¹⁰⁶ We note that in the “pure issue of law” cases, the Court's issuance of a decision voiding the law (whether statute, ordinance, or rule), would have ended the litigation. The issuance of a stay here will not do that. The Board will still have to hear these cases.

¹⁰⁷ See Burns v. Sundlun, 617 A.2d 114, 117 (R.I. 1992) *citing* M.B.T., *ante*, 528 A.2d at 338.

¹⁰⁸ *E.g.* D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1040-41 (R.I. 1986).

III CONCLUSION

In conclusion, I find that in this case there is no valid reason to dispense with the statutorily mandated scheme of administrative adjudication in contested unemployment cases. We should allow that process an opportunity to effect what I deem its primary salutary purpose, which is a sound development of the facts of the case.¹⁰⁹ If Verizon is correct, and it ultimately prevails in the instant case, it will be held harmless from any adverse financial impact.

On the other hand, Claimants too have a right to have “their day in Court” with the Board of Review; they have a right to attempt to prove their case, no matter how hopeless their cause is in Verizon’s eyes. And we should do nothing to prejudice that proceeding.

Upon careful review of the materials presented to this Court, I recommend that this Court find that the grounds for the issuance of stay have not been met — neither as to the jurisdictional authority of this Court, nor as to the equitable factors.

¹⁰⁹ SEIU, ante, at 37, n. 103, 788 A.2d at 467 (quoting Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992)).

