STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 13, 2026)

CITY OF PROVIDENCE,	:	
	:	
Plaintiff/Appellant,	:	
	:	
v.	:	**C.A. No. PC-2025-03678**
	:	
SERGEANT JOSEPH HANLEY,	:	
	:	
Defendant/Appellee.	:	

DECISION

STERN J. Before this Court is Plaintiff/Appellant the City of Providence's ("the City") Complaint for Judicial Review of the Final Decision of the Law Enforcement Officers' Bill of Rights Hearing Committee ("Hearing Committee") and Defendant/Appellee Sergeant Joseph Hanley's ("Mr. Hanley") Objection.

I

Facts & Travel

This Law Enforcement Officers' Bill of Rights ("LEOBOR") case arises from police misconduct committed by Mr. Hanley on April 19, 2020. (LEOBOR Decision at 2.) Providence Police were responding to a domestic violence disturbance when Mr. Hanley and other officers arrested Rishod Gore for disorderly conduct, during the course of which Mr. Hanley, according to the Hearing Committee, committed four specific instances of behavior against Mr. Gore that exceeded the bounds of the reasonable standard expected of law enforcement officers during a use of force. *Id*. at 34-36. Mr. Hanley has been suspended without pay since February 2, 2021. *See Joseph Hanley v. Steven M. Pare et al.*, No. PC-2020-07596, Feb. 2, 2021, Gibney, P.J. Mr. Hanley

was charged and found guilty of simple assault in a bench trial presided over by Judge Brian Goldman in the Rhode Island District Court. (LEOBOR Decision at 11.) Mr. Hanley appealed this decision to the Rhode Island Superior Court for a *de novo* trial before a jury. *Id*. at 12; Dist. R. Crim. P. 9(b). The jury was unable to reach a unanimous verdict, resulting in a mistrial. (LEOBOR Decision at 13.) On December 16, 2024, Mr. Hanley pled nolo contendere to one count of simple assault and/or battery and was sentenced by Associate Justice Darigan to one year probation and no contact with the victim. *State of Rhode Island v. Joseph Hanley*, P3-2021-1037A, J. of Conviction and Commitment, Dec. 16, 2024, Darigan J. The City continued pursuing termination proceedings against Mr. Hanley, which led to the initiation of a LEOBOR hearing. (LEOBOR Decision at 13.)

The Hearing Committee consisted of Major Todd Patalano, Commander Timothy O'Hara, and Sergeant Robert Boehm. *Id*. at 1. During the hearing, the City called four members of the Providence Police Department to testify. *Id*. at 2. Mr. Hanley testified on his own behalf. *Id*. Importantly, there is no dispute that Mr. Hanley was not listed as a witness to be called to testify at the hearing, and the Hearing Committee permitted Mr. Hanley to testify over the City's objection. *Id*. at 33. The hearing lasted six days, and the Hearing Committee ultimately rendered its decision as to six[1] different charges. *Id*. at 2, 37-50. Charge 1 alleged a violation of Section 200.1 of the Providence Police Department Rules and Regulations (Use of Force Policy 300.01) titled "Knowledge of Laws and Rules"; Charge 3 alleged a violation of Section 200.12 of the Providence Police Department Rules and Regulations titled "Courtesy"; Charge 7 alleged a violation of Section 200.8 of the Providence Police Department Rules and Regulations titled "Duty

[1] Initially there were ten charges, but several were incorporated into other charges as duplicative. Specifically, Charge 2 was incorporated into Charge 1, and Charges 4, 5, and 6 were incorporated into Charge 3. *See* LEOBOR Decision at 37-50.

Responsibilities"; Charge 8 alleged a violation of Section 200.18 of the Providence Police Department Rules and Regulations titled "Truthfulness"; Charge 9 alleged a violation of G.L. 1956 § 11-5-3[2] titled "Simple Assault or Battery"; Charge 10 alleged a violation of Section 200.2 of the Providence Police Department Rules and Regulations titled "Obedience to Laws and Rules." *Id.* at 37-50. The Hearing Committee found the following as to each charge: sustained Charge 1 as guilty by a unanimous 3-0 vote; sustained Charge 3 as guilty by unanimous vote; reversed Charge 7 to not guilty by unanimous vote; reversed Charge 8 to not guilty by a vote of 2-1; reversed Charge 9 to not guilty by a vote of 2-1; and sustained Charge 10 as guilty by unanimous vote. *Id.*

In a 2-1 vote, with Commander O'Hara dissenting, the panel ultimately modified the City's recommended sanction of termination by imposing a suspension of forty-five days without pay with the expectation that Mr. Hanley "complete all necessary training and certifications required to meet current departmental standards." *Id.* at 50. The City sought judicial review of the Hearing Committee's decision by filing a complaint in the Providence Superior Court on July 9, 2025. (Docket.) The City filed a Motion to Stay on July 28, 2025. *Id.* Mr. Hanley filed a Motion for Injunctive Relief on September 5, 2025. *Id.* This Court heard oral arguments on the City's Motion to Stay and Mr. Hanley's Motion for Injunctive Relief on September 17, 2025. *Id.* This Court denied Mr. Hanley's Motion for Injunctive Relief and granted the City's Motion to Stay finding,

[2] G.L. 1956 § 11-5-3 provides, in pertinent part, "every person who shall make an assault or battery or both shall be imprisoned not exceeding one year or fined not exceeding one thousand dollars[.]" Caselaw provides the precise definition of simple assault and/or battery. "After recognizing that the term 'assault and battery' is customarily used to refer to activity arising out of a single incident, this court held that 'assault and battery are separate and different acts, each with independent significance.' . . . 'An assault is a physical act of a threatening nature or an offer of corporal injury which puts an individual in reasonable fear of imminent bodily harm. . . . Battery refers to an act that was intended to cause, and does cause, an offensive contact with or unconsented touching of or trauma upon the body of another, thereby generally resulting in the consummation of the assault.'" *State v. Messa*, 594 A.2d 882, 884 (R.I. 1991) (quoting *Proffitt v. Ricci*, 463 A.2d 514, 517 (R.I. 1983)) (internal citations omitted).

inter alia, the City had made a strong showing that it would prevail on the merits of its appeal. (Docket.) This Court received the Original Administrative Record on October 2, 2025. *Id*. The City filed its memorandum in support of its Complaint for Judicial Review of the Hearing Committee's Decision and Mr. Hanley filed his opposition to the same on October 10, 2025. *Id*. The City and Mr. Hanley filed their responses on October 14 and October 15, 2025, respectively. *Id*. Now comes the substance of the City's appeal from the Hearing Committee's decision.

II

Standard of Review

While LEOBOR is not technically an administrative agency, in the context of appeals from a LEOBOR hearing committee's decision, G.L. 1956 § 42-28.6-12(a) states "the hearing committee shall be deemed an administrative agency and its final decision shall be deemed a final order in a contested case within the meaning of § 42-35-15 and § 42-35-15.1." Section 42-28.6-12(a). Under G.L. 1956 § 42-35-15, "[a]ny person . . . who has exhausted all administrative remedies available to him or her within [an] agency, and who is aggrieved by a final order in a contested case is entitled to judicial review" by this Court. Section 42-35-15. Our Supreme Court has made clear that "'[w]hen this Court reviews an administrative appeal brought under the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42, our review is limited to questions of law.'" *Banki v. Fine*, 224 A.3d 88, 93 (R.I. 2020) (quoting *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019)). "'Although we afford great deference to the factual findings of the administrative agency, questions of law—including statutory interpretation—are reviewed *de novo*.'" *Id.* (quoting *Blais*, 212 A.3d at 611) (further quotation omitted). Upon review, this 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:

> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and
> "substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion
> or clearly unwarranted exercise of discretion." Section 42-35-15(g).

This Court must not "substitute its judgment for that of the agency as to the weight of the evidence on questions of fact" and will defer to an agency's factual determinations if they are supported by legally competent evidence on the record. *Id.*; *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007). Legally competent evidence is defined as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'" *Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1125 (R.I. 2000) (quoting *Center for Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)). "Thus, '[i]f legally competent evidence exists to support that determination, we will affirm it unless one or more errors of law have so infected the validity of the proceedings as to warrant reversal.'" *City of Pawtucket v. Laprade*, 94 A.3d 503, 513 (R.I. 2014) (quoting *Murphy v. Zoning Board of Review of the Town of South Kingstown*, 959 A.2d 535, 540 (R.I. 2008)).

III

The City's Argument

The City seeks for this Court to modify the Hearing Committee's ultimate decision to impose a forty-five-day suspension on Mr. Hanley, or, in the alternative, to reverse and remand this case for further proceedings based upon the argument that the Hearing Committee prejudiced

the City's substantial rights. (Pl.'s Mem. in Supp. of Compl. for Judicial Review (Pl.'s Mem.) 1-2.) The City argues its substantial rights were prejudiced when the Hearing Committee (1) suspended Mr. Hanley rather than terminate his employment; (2) found Mr. Hanley not guilty of violating § 11-5-3; and (3) allowed Mr. Hanley to testify as a witness at the LEOBOR hearing in spite of him not being disclosed as a witness in a timely manner. *Id*. at 6-7. The City sets forth a variety of theories in support of this position. *See id*. at 11-12. The City argues the Hearing Committee's decision was founded upon unlawful procedure because the Hearing Committee exceeded its statutory authority by allowing Mr. Hanley to testify even though he was not disclosed as a witness in a timely manner in violation of §§ 42-28.6-5(d) and 42-28.6-5(e). *Id*. The City also argues, based upon the reasons set forth in Commander O'Hara's dissent, that the Hearing Committee's decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" *Id*. at 12. The City states the Hearing Committee's decision was "characterized by an abuse of discretion or clearly unwarranted exercise of discretion" because LEOBOR proceedings are matters of great public concern; the City argues no one could have confidence in a decision that reinstates what the City considers "an abusive cop." *Id*. at 12 (citing *Laprade*, 94 A.3d at 517 ("Police disciplinary proceedings under LEOBOR are matters of great public concern, such that the parties and the public should have confidence in the result.").

The City essentially argues that termination was the only appropriate sanction for Mr. Hanley's conduct. *Id*. at 7-10. This argument is based upon testimony from the Providence Police Department's Chief of Police, Colonel Oscar Perez, as well as several persuasive cases dealing with police officers accused of misconduct. *Id*. at 9-11. The first case cited is *Zions v. Police Board of the City of Chicago*, 385 N.E.2d 51 (Ill. App. 1978) where the Appellate Court of Illinois, First

District, Third Division, affirmed in part[3] the administrative action of Chicago's police board, which had initially discharged the defendant police officers, because the police board's findings "were not against the manifest weight of the evidence[.]" *Zions*, 385 N.E.2d at 55-56. The City also cites *Nelson v. Orem City Department of Public Safety*, 278 P.3d 1089 (Utah Ct. App. 2012) where the Court of Appeals of Utah affirmed the Orem City Employee Appeals Board's decision to terminate the officer accused of misconduct even though the officer had no prior history of discipline. *Nelson*, 278 P.3d at 1090-91. The last case cited by the City on this point was *Decatur Police Benevolent and Protective Association Labor Committee v. City of Decatur*, 968 N.E.2d 749 (Ill. App. Ct. 2012) where the Appellate Court of Illinois, Fourth District, affirmed a trial court's reversal of an arbitrator's decision to reinstate a police officer who was found by a preponderance of the evidence to have lied and committed acts of domestic violence. *Decatur Police*, 968 N.E.2d at 758. The arbitration award was vacated pursuant to "a public-policy exception to vacate arbitral awards which otherwise derive their essence from a collective-bargaining agreement" whereby courts "should not enforce a collective-bargaining agreement when its enforcement is repugnant to established norms of public policy." *Id*. at 754-55 (internal quotation omitted). Ultimately, the court in *Decatur Police* found "there is well-defined and dominant public policy against acts of domestic violence" and further that "[i]t is a violation of public policy to require the continued employment of an officer who has been found to be abusive and untruthful." *Id*. at 758. The City cites these cases primarily to support the proposition that

[3] This case concerned two police officers accused of misconduct. The Chicago police board's administrative action initially terminated both, which was reversed by the circuit court as against the manifest weight of the evidence, and the Appellate Court of Illinois subsequently affirmed in part and reversed in part the circuit court's decision. The termination of the officer accused of direct misconduct was affirmed, and the termination of the officer accused of failing to report misconduct of another officer was reversed.

terminating Mr. Hanley's employment was the appropriate sanction for his conduct. (Pl.'s Mem. 10.)

The City then argues that the Hearing Committee committed legal error by failing to find Mr. Hanley guilty of simple assault and/or battery. *Id*. at 13-19. The City states that the Hearing Committee's decision was erroneous because it was solely based upon the logic that "because Sergeant Hanley was not convicted in a criminal court of having committed the crime of battery he could not be found to have committed battery in his LEOBOR civil administrative hearing." *Id*. at 14. To support this argument, the City first provides discussion on the nature of LEOBOR proceedings and concludes that, while judicial in nature, LEOBOR proceedings are decidedly not criminal proceedings and therefore the Hearing Committee was able to and should have found that Mr. Hanley violated § 11-5-3. *Id*. at 14-15. The City then cites G.L. 1956 § 9-1-2 which provides in pertinent part:

> "Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made[.]" *Id*. at 16 (citing § 9-1-2).

The City points out that under Rhode Island law there is no distinction between criminal and civil battery, and that criminal laws can be "violated" for the purposes of a civil action even if there was no conviction in criminal court. *Id*. at 16-19 (citing *Fenwick v. Oberman,* 847 A.2d 852, 855 (R.I 2004) ("the law recognizes no distinction between criminal and civil battery")); *Zions,* 385 N.E.2d at 55 ("In considering [the accused police officer's] criminal liability for [victim's] injuries, the District Court utilized a stricter standard of proof than the Police Board was required to employ. Accordingly, the decision of the District Court is not relevant to [the officer's] appearance before the Board."). Accordingly, the City argues that Mr. Hanley's plea of nolo contendere to a charge

of simple assault and/or battery supported a finding of guilty as to Charge 9. *Id*. at 17-18. The City also argues that the Hearing Committee's findings in Charge 1, namely that Mr. Hanley committed three separate, intentional physical contacts with Mr. Gore's body that were neither necessary nor proportionate, necessitated a guilty verdict under Charge 9. *Id*. at 18. Said another way, the City posits that the Hearing Committee made specific factual findings that Mr. Hanley committed what amounts to simple assault and/or battery under Charge 1, but simply failed to conclude as much under Charge 9. *Id*.

Finally, the City argues that the Hearing Committee exceeded its statutory authority by allowing Mr. Hanley to testify even though he was not disclosed as a witness in a timely manner, and therefore this case should be reversed and remanded for a *de novo* hearing. *Id*. at 19. The City first points to § 42-28.6-5(d), which requires the disclosure of witnesses five days prior to the hearing date, and further to § 42-28.6-5(e), which necessitates the exclusion of any testimony by witnesses not timely disclosed. *Id*. at 22. The City argues there is no exception for party-witnesses, nor is there any other source of statutory authority under LEOBOR that provided the Hearing Committee with the power to allow Mr. Hanley to testify without being timely disclosed. *Id*. at 26-29. The City argues that regardless of the broad authority granted to a LEOBOR hearing committee to investigate police misconduct, § 42-28.6-5(e), when read in conjunction with the entire LEOBOR statute, provides only one penalty for untimely disclosure of witnesses: exclusion of their testimony. *Id*. at 28-29. The City also posits that § 42-28.6-7, which provides hearing committees the power to subpoena witnesses and "examine any individual," provides hearing committees the power to examine only witnesses when it is read in conjunction with the rest of the statute. *Id*. Finally, the City discusses why LEOBOR applies to this case, as opposed to Law Enforcement Officers' Due Process, Accountability, and Transparency Act ("LEODPATA"),

which amended LEOBOR and became effective beginning on January 1, 2025. *Id*. at 21-22, 24-26. Mr. Hanley does not dispute the applicability of LEOBOR to this case.[4] It appears the City provides this context because LEODPATA vests the chairperson of a hearing committee with the discretion to address sanctions if a witness is not timely disclosed, whereas LEOBOR, the City argues, provides no such discretion. *Id*. at 24-26. The City then points to at least seven instances when the Hearing Committee's decision cited Mr. Hanley's LEOBOR testimony and argues that the exclusion of his testimony may have changed the outcome of the decision and that the Hearing Committee's failure to do so was an error of law that prejudiced the City's substantial rights. *Id*. at 32-33.

IV

Mr. Hanley's Opposition

Mr. Hanley seeks for this Court to affirm the Hearing Committee's decision. (Def.'s Mem. in Supp. of his Opp'n to Pl.'s Administrative Appeal (Def.'s Mem.) 47-48.) Mr. Hanley argues the Hearing Committee's decision permitting him to testify was not an error of law. *Id*. at 6-7. Mr. Hanley argues in the alternative, assuming an error of law is found to have occurred, that there was more than enough evidence, separate and apart from Mr. Hanley's testimony, to support the Hearing Committee's decision. *Id*. at 13-28. Thus, Mr. Hanley argues, under the standard of review for administrative appeals, that this Court should sustain the Hearing Committee's decision because the decision was supported by some competent evidence and that there were no errors of law. *Id*. In the alternative, Mr. Hanley argues any errors of law that may have occurred were not so grave as to warrant a reversal of the Hearing Committee's decision. *Id*.

[4] *See* Def.'s Obj. to Pl.'s Mot. to Stay 3 n.1 ("The LEOBOR statute governing these proceedings was that as it existed before January 1, 2025, when amendments to the same became effective.").

Mr. Hanley first argues that the failure of the Hearing Committee to exclude his testimony was not an error of law. *Id*. at 6. Mr. Hanley begins by contending that invoking his right to a hearing was an implicit invocation of his right to be heard and that no further action was required, including disclosure as a witness, in order for him to be permitted to testify. *Id*. Mr. Hanley further argues that, as a party-witness, he has the right to be present at all stages of the LEOBOR proceeding and that § 42-28.6-9, which provides parties the right to cross-examine witnesses and present rebuttal evidence, supports his intrinsic right to testify without being disclosed. *Id*. at 7. Mr. Hanley argues his right to present rebuttal evidence "would naturally include his own testimony[,]" and that § 42-28.6-6(a), which provides "[e]vidence possessing probative value commonly accepted by reasonable and prudent persons . . . shall be admissible and shall be given probative effect[,]" also supports his right to testify without disclosure. *Id*. Mr. Hanley situates this argument upon the underlying rationale of disclosure requirements being about giving fair notice, and he argues that this requirement was satisfied when he invoked his right to a hearing. *Id*.

Mr. Hanley argues in the alternative that if this Court were to find that the Hearing Committee's decision to allow Mr. Hanley to testify was an error of law, it is not so grave an error as to warrant reversal of the Hearing Committee's decision. Mr. Hanley cites four Rhode Island Supreme Court cases dealing with administrative appeals in support of this argument. *Id*. at 7-13. In the first, *Pierce v. Providence Retirement Board*, 15 A.3d 957 (R.I. 2011) our Supreme Court quashed the Providence Retirement Board's decision to deny the plaintiff's application for disability benefits because the board had misinterpreted the causation standard to be applied and therefore committed an error of law sufficient to infect the validity of the proceedings. *Pierce*, 15 A.3d at 966. In *Preservation Society of Newport County v. City Council of the City of Newport*, 155 A.3d 688 (R.I. 2017) our Supreme Court recognized it is the reviewing court's directive to

‘“scour the record to discern whether any legally competent evidence supports the lower tribunal’s decision and whether the decision-maker committed any reversible errors of law in the matter under review.”’ *Preservation Society*, 155 A.3d at 692 (quoting *Cullen v. Town Council of the Town of Lincoln*, 893 A.2d 239, 243-44 (R.I. 2006)). Accordingly, our Supreme Court quashed the decision of the Newport City Council to deny an application for a victual license because the decision was a single sentence that did not set forth factual findings or legal grounds to support its decision. *Id*. at 691-93. Similarly, in *Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893 (R.I. 1988) our Supreme Court stated that “[a]n administrative decision that fails to include findings of fact required by statute cannot be upheld,” and accordingly reversed the CRMC’s denial for failing to include any mention of evidence required by statute to be addressed. *Sakonnet Rogers*, 536 A.2d at 896. Mr. Hanley also cited *Prew v. Employee Retirement System of the City of Providence*, 139 A.3d 556 (R.I. 2016) where our Supreme Court quashed the decision of the City of Providence Retirement Board based upon the finding that the Board was without authority to impose an additional condition not contained in the statute for obtaining work-related disability. *Prew*, 139 A.3d at 565-66. The imposition of the extra condition was found to be an error of law warranting remand. *Id*. at 566. Finally, Mr. Hanley cites *Laprade*, also a LEOBOR case, where our Supreme Court found that multiple errors of law were committed at a very early stage in the LEOBOR proceedings such that reversal was warranted. *Laprade*, 94 A.3d at 516-17. Mr. Hanley relies upon *Laprade* to argue that reversal was only warranted in that case because no evidence was ever taken and therefore there was nothing for the reviewing court to consider. Similarly, Mr. Hanley uses *Pierce* to argue that the misinterpretation of the causation standard was an error of law such that “nothing else mattered.” (Def.’s Mem. 12.) Mr. Hanley makes the same argument under *Prew* and *Sakonnet Rogers*, arguing the errors of law in those

cases made judicial review impossible. *Id*. Mr. Hanley then distinguishes this case by arguing that there was an abundance of evidence separate and apart from Mr. Hanley's testimony that supported the Hearing Committee's decision and therefore any error of law by permitting him to testify did not infect the validity of the proceedings. *Id*. at 13. Thus, Mr. Hanley argues any supposed error of law is meaningless in the face of the independent evidence before the Hearing Committee coupled with the Hearing Committee's decision to reject Mr. Hanley's testimony. *Id*. To demonstrate this point, Mr. Hanley provides a lengthy discussion of the evidence submitted to the Hearing Committee beyond that of his LEOBOR testimony, including discussion of sanctions leveled against other police officers accused of misconduct, Mr. Hanley's Rhode Island District Court testimony before Judge Goldman, and a wide variety of other evidence which Mr. Hanley posits is "wholly independent from the testimony offered by Hanley at the LEOBOR hearing." *Id*. at 13-47. For example, Mr. Hanley argues that his LEOBOR testimony is functionally identical to his Rhode Island District Court testimony, which was in fact submitted into the record, and therefore allowing him to testify was a harmless error because his LEOBOR testimony was duplicative of other evidence already present in the record. *Id*. at 23-28. Mr. Hanley also cites § 42-28.6-7, which empowers a LEOBOR hearing committee to "subpoena witnesses and . . . examine any individual under oath," to argue that irrespective of Mr. Hanley's testimony, the Hearing Committee itself also examined Mr. Hanley, and that during this examination Mr. Hanley provided testimony independent of that which was provided in his capacity as a witness which was sufficient to support the Hearing Committee's findings. *Id*. at 40. Mr. Hanley further argues the plain language of the statute does not limit hearing committees to examining only witnesses. *Id*. at 35. In sum, Mr. Hanley's argument is that there exists ample evidence to support the Hearing

Committee's decision to sanction him with a forty-five-day suspension rather than termination and therefore the Hearing Committee's decision should be affirmed. *See generally id*.

V

The Parties' Replies

The City filed a brief response to Mr. Hanley's Opposition Memorandum which reiterated the City's position that allowing Mr. Hanley to testify was a prejudicial error of law. (Pl.'s Reply Mem. 1-2.) The other point the City's Reply Memorandum makes is that Mr. Hanley's discussion of other evidence in the record has no bearing on the actual grounds for which the Hearing Committee stated it relied upon in its decisions. To the first point, the City provides a quote from *State v. Rader*, 124 P. 195 (Or. 1912), a criminal case dealing in part with the effect of a jury hearing inadmissible evidence. Pl.'s Reply Mem. at 1-2; *Rader*, 124 P. at 196. That quote reads, "[i]t is not an easy task to unring a bell, nor to remove from the mind an impression once firmly imprinted there[.]" *Rader*, 124 P. at 196. The City also cites *State v. Funches*, 160 A.3d 981 (R.I. 2017), solely for the quote that "'[o]nce laypeople have heard evidence, or in this case a remark, tending to show that the defendant committed a crime similar to the one he or she is being tried for, their impartiality may become tainted.'" *Funches*, 160 A.3d at 986 (quoting *State v. Ordway*, 619 A.2d 819, 826 (R.I. 1992)). Based on these propositions, the City states that Mr. Hanley's "testimony made a firm impression on the hearing committee and because such testimony was inextricably linked to its determination of his penalty, his testimony tainted the proceedings to a degree necessitating the reversal of the hearing committee's decision." (Pl.'s Reply Mem. 2.) Finally, the City argues that Mr. Hanley's extended discussion of separate evidence is unavailing because the Hearing Committee devoted only one sentence to what Mr. Hanley spent more than thirty pages on, and that "'[e]ven if the evidence in the record, combined with the reviewing court's

understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency's findings and for the reasons stated by the agency.'" *Id*. at 2-3 (quoting *Sakonnet Rogers*, 536 A.2d at 897) (citation omitted). The City therefore argues Mr. Hanley's discussion of the evidence in the record cannot be a basis for the Hearing Committee's ultimate decision. *Id*. at 3.

Mr. Hanley also filed a brief response which reiterates several points. *See generally* Def.'s Reply Mem. Mr. Hanley argues the City is looking for a do-over and for this Court to substitute its judgment for that of the Hearing Committee. *Id*. at 1. Mr. Hanley disagrees with the City's contention that the Hearing Committee based its decision heavily on Mr. Hanley's testimony and provides specific references where he argues the Hearing Committee cited to other evidence in the record separate and apart from his testimony. *Id*. at 1-5. Mr. Hanley also distinguishes two of the cases cited by the City, *Zions* and *Nelson*, by correctly pointing out the courts in these decisions merely affirmed the underlying administrative decision to terminate the police officers, which is a decidedly different hurdle than reversing an administrative decision in order to impose termination as the sanction. *Id*. at 6. Mr. Hanley also argues that "a hearing committee has no authority to find a person guilty of violating a criminal statute." *Id*. Mr. Hanley posits that power is solely within the purview of a proper criminal proceeding, and therefore the Hearing Committee's finding that Mr. Hanley did not violate § 11-5-3 was proper because Mr. Hanley was not convicted in Superior Court. *Id*. at 6-7. Mr. Hanley also reiterates his argument that § 42-28.6-7 provides hearing committees the power to examine anyone, not just disclosed witnesses, and that the City's arguments to the contrary are unavailing based on the plain language of the statute. *Id*. at 7. Finally, Mr. Hanley reiterates the substance of his filings by stating there was no error of law committed that was grave enough to warrant reversal and remand, and that the record contained an abundance

of independent evidence to support the Hearing Committee's ultimate decision to impose a forty-five-day suspension. *Id*. at 8.

VI

Analysis

The first question before this Court is whether the Hearing Committee's decision to allow Mr. Hanley to testify over the City's objection was an error of law. In order to make this determination, it is necessary to analyze §§ 42-28.6-5(d) and 42-28.6-5(e). "When confronted with an issue of statutory construction, we 'look to the plain and ordinary meaning of the statutory language.'" *State v. Greenberg*, 951 A.2d 481, 489 (R.I. 2008) (quoting *Henderson v. Henderson*, 818 A.2d 669, 673 (R.I. 2003)). "'If the language is clear on its face, then the plain meaning of the statute must be given effect' and this Court should not look elsewhere to discern the legislative intent." *Id.* (quoting *Henderson*, 818 A.2d at 673). "Moreover, 'when we examine an unambiguous statute, there is no room for statutory construction and we must apply the statute as written.'" *Id*. (quoting *State v. DiCicco*, 707 A.2d 251, 253 (R.I. 1998) (further internal quotation omitted).

The two major provisions in question are §§ 42-28.6-5(d) and 42-28.6-5(e).[5] Section 42-28.6-5(d) states "[n]ot less than five (5) days prior to the hearing date, the law enforcement officer

[5] P.L. 2024, ch. 69, § 1 and P.L. 2024, ch. 70, § 1 amended the "Law Enforcement Officers' Bill of Rights" to the "Law Enforcement Officers' Due Process, Accountability, and Transparency Act" effective January 1, 2025. The conduct at question here occurred in April 2020. "'Only when the Legislature, by express language or necessary implication, manifests its intent that a statute be given retroactive effect, will the courts apply it retrospectively[.]'" *State v. Briggs*, 58 A.3d 164, 168 (R.I. 2013) (quoting *In re Alicia S.*, 763 A.2d 643, 646–47 (R.I. 2000)). The Legislature made no such indication of retroactive effect here and therefore the applicable version of chapter 28.6 of title 42 to this proceeding is the version that was effective during April 2020. That version is primarily sourced from P.L. 1995, ch. 19, § 1, effective Apr. 14, 1995. The most recent amendment to LEOBOR prior to 2024 was P.L. 2007, ch. 497 § 2, P.L. 2007, ch. 519, § 2, effective October 30, 2007, and therefore G.L. 1956 Reenactment of 2007, Vol. 6C, Part I contains the most recent provisions of chapter 28.6 of title 42 that are relevant to this proceeding.

shall provide to the charging law enforcement agency a list of all witnesses, known to the officer at that time, to be called by the officer to testify at the hearing." The plain meaning of this statute sets a five-day deadline for the disclosure of *all* witnesses known to the officer at that time. Further, § 42-28.6-5(e) states "[f]ailure by either party to comply with the provisions of subsections (c) and (d) of this section shall result in the exclusion from the record of the hearing of testimony and/or evidence not timely disclosed in accordance with those subsections." The Supreme Court has "long held that the use of the word 'shall' denotes 'something mandatory or the imposition of a duty.'" *City of Providence v. Estate of Tarro*, 973 A.2d 597, 605 (R.I. 2009) (quoting *Castelli v. Carcieri*, 961 A.2d 277, 284 (R.I. 2008)) (further quotation omitted). The meaning of these sections is therefore clear and unambiguous. All testifying witnesses must be disclosed no less than five days prior to the hearing, and failure to do so mandates exclusion of that witness's testimony. This is further supported by comparing the mandatory exclusion requirement of § 42-28.6-5(e) with other provisions set forth in chapter 28.6 of title 42, including subsections 4(c), (d), and (e), as well as subsection 5(b). Each of these provisions sets deadlines to be complied with but provides discretion for the presiding justice to extend those deadlines "for good cause shown." Thus, there are provisions within the statute which provide for the ability to extend deadlines upon good cause being shown, but that § 42-28.6-5(e) contains no such discretion. If the Legislature had intended for subsection 5(e) to contain a "good cause" exception, or any other exception, they would have written it into the specific provisions as they did with several other sections. Therefore, this Court finds §§ 42-28.6-5(d) and 42-28.6-5(e) to be clear and unambiguous, setting out a five-day deadline for the disclosure of witnesses by the officer, the failure of which mandates the exclusion of the undisclosed witness's testimony. The other provisions of chapter 28.6 of title 42 cited by Mr. Hanley do not abrogate the procedural requirements set forth in §§ 42-28.6-5(d) and 42-28.6-

5(e). Even § 42-28.6-7, which provides hearing committees with the power to subpoena witnesses and "examine any individual under oath," does not remove the requirement to disclose witnesses in a timely manner, nor does it allow the committee to avoid the mandate of § 42-28.6-5(e), and this section does not change the fact that Mr. Hanley did indeed testify. Mr. Hanley was not just examined by the Hearing Committee but was subject to direct examination, cross-examination, and re-direct examination by the parties' respective attorneys. (LEOBOR Hr'g Tr. at 5-210, Apr. 15, 2025.) Based upon the preceding analysis, this Court finds that the Hearing Committee committed an error of law when it failed to exclude Mr. Hanley's testimony.

The next question is whether this error "'so infected the validity of the proceedings as to warrant reversal.'" *Laprade*, 94 A.3d at 513 (quoting *Murphy*, 959 A.2d at 540). This Court finds that this error indeed rises to a level warranting reversal. Notwithstanding any of the other evidence submitted to the Hearing Committee, this Court notes that Mr. Hanley testified directly before the Hearing Committee for several hours, and the Hearing Committee's decision consistently and repeatedly references his testimony, oftentimes providing multiple pages of unbroken excerpts from Mr. Hanley's direct testimony and his answers on cross-examination. *See e.g.*, LEOBOR Decision at 7-8, 13-17, 21-28. Further, the Hearing Committee directly referenced Mr. Hanley's testimony in three of the four findings as to Charge 1, as well as utilized a direct excerpt from Mr. Hanley's LEOBOR testimony in its findings for Charge 8. *Id*. at 39-40, 45-46. While the Hearing Committee ultimately rejected Mr. Hanley's explanations, the Hearing Committee also expressly stated:

> "In fact, [Mr. Hanley's] testimony was remarkably candid and powerful to the panel. He provided clear and compelling reasoning for each decision he made during the incident. His explanation demonstrated a thoughtful application of his training and experience under pressure, and it offered the panel valuable insight into the

> split-second decision-making required in high-stress encounters." *Id*. at 20-21.

This passage unambiguously demonstrates that the failure to exclude Mr. Hanley's testimony infected the validity of the proceedings because Mr. Hanley's testimony was clearly a substantial consideration in the Hearing Committee's decision. Even though the Hearing Committee ultimately rejected Mr. Hanley's testimony, and irrespective of the other evidence in the record, the very fact that it was heard and considered in the decision constitutes an error of law that infected the validity of the proceedings. To hold otherwise would require this Court to engage in complete conjecture as to what the Hearing Committee might have decided if Mr. Hanley's LEOBOR testimony had been excluded.

Even assuming this error of law was harmless, as Mr. Hanley argues it was, the Hearing Committee's decision on Charge 9, essentially the principal charge of this case, was not supported by sufficient grounds such that this Court cannot affirm the Hearing Committee's decision. The Hearing Committee's two justifications behind why it found Mr. Hanley not guilty of violating § 11-5-3 were that a jury failed to find Mr. Hanley guilty of the same charge beyond a reasonable doubt and that a plea of nolo contendere is not considered a conviction under Rhode Island law. (LEOBOR Decision at 47-49.) Importantly, the relevant version of § 42-28.6-11(c) provides that "[i]n any proceeding under this chapter, it shall be the burden of the charging law enforcement agency to prove, *by a fair preponderance of the evidence*, that the law enforcement officer is guilty of the offense(s) or violation(s) of which he or she is accused." Section 42-28.6-11(c) (emphasis added). Further, § 42-28.6-11(b) requires that "[a]ny decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact." Section 42-28.6-11(b). Thus, the Hearing Committee was charged with evaluating whether Mr. Hanley committed simple assault and/or battery by a fair preponderance of the evidence and was required to set out

the facts which supported their conclusion. Section 42-28.6-11(b)-(c). The Hearing Committee's decision as to Charge 9 states "[t]he charge of Violation of Rhode Island General Law SIMPLE ASSAULT or BATTERY is hereby REVERSED-NOT GUILTY with a majority vote of 2-1. *Based on the following facts*:." (LEOBOR Decision at 47) (emphasis in original). The Hearing Committee then recounted the procedural posture of the various proceedings surrounding Mr. Hanley being accused of violating § 11-5-3 from the state District Court through the Rhode Island Superior Court, which eventually resulted in Mr. Hanley's plea of nolo contendere. *Id*. at 47-48. The Hearing Committee also devotes several paragraphs to explaining why a plea of nolo contendere is not a conviction under Rhode Island law and that a plea of nolo contendere "cannot be used against the individual in any future civil or administrative proceedings." *Id*. at 47-48. In finding Mr. Hanley not guilty of Charge 9, the Hearing Committee ultimately stated:

> "Therefore, it is important to emphasize that Sergeant Hanley has *not* been convicted of simple assault under Rhode Island law. The original conviction was vacated on appeal, the Superior Court trial resulted in no conviction, and the nolo contendere plea *does not* constitute a finding of guilt under Rhode Island law. Accordingly, this charge is hereby reversed by panel majority." *Id*. at 49 (emphasis in original).

The Hearing Committee, based on its stated rationale, appears to have believed it was merely charged with determining whether Mr. Hanley had been convicted of violating § 11-5-3 in Superior Court, which is decidedly not the case. *Id*. at 47-49. Therefore, the Hearing Committee, by finding Mr. Hanley not guilty of Charge 9 under the rationale that he was not found guilty beyond a reasonable doubt in Superior Court, essentially applied a higher burden of proof than it was charged with evaluating this case under. "If we could erect a graduated scale which measured the comparative degrees of proof, the 'preponderance' burden would be at the lowest extreme of our scale; 'beyond a reasonable doubt' would be situated at the highest point[.]" *Parker v. Parker*, 103

R.I. 435, 442, 238 A.2d 57, 61 (1968). To be even more precise, "proof by a 'preponderance of the evidence' means that a jury must believe that the facts asserted by the proponent are more probably true than false; proof 'beyond a reasonable doubt' means the facts asserted by the prosecution are almost certainly true[.]"' *Id*. (citing *Cook v. Michael*, 330 P.2d 1026, 1032-33 (Or. 1958)). This Court finds it necessary to emphasize that 'beyond a reasonable doubt' is a higher burden than 'by a preponderance of the evidence' such that any failure to find a person guilty beyond a reasonable doubt does not have a preclusive effect of finding the same person guilty of the same offense by a preponderance of the evidence. *Id*. at 441-42, 238 A.2d at 60-61. To do so would be to apply a stricter burden of proof than set forth in § 42-28.6-11(c). Therefore, the fact that Mr. Hanley was not convicted beyond a reasonable doubt is, on its own, insufficient as a matter of law to conclude that he did not commit the offense by a fair preponderance of the evidence. Irrespective of whether the Hearing Committee could consider Mr. Hanley's plea of nolo contendere, the Hearing Committee was not precluded from considering the underlying facts that formed the basis of that plea, nor was the Hearing Committee precluded from finding Mr. Hanley guilty of violating § 11-5-3 by a preponderance of the evidence solely because he was not convicted beyond a reasonable doubt in Superior Court. *See* § 9-1-2 (providing civil liability for criminal conduct even if no criminal complaint is made); § 42-28.6-11(c) ("it shall be the burden of the charging law enforcement agency to prove, *by a fair preponderance of the evidence*, that the law enforcement officer is guilty of the offense(s) or violation(s) of which he or she is accused") (emphasis added). Even further, this Court notes that the Hearing Committee did find, under Charge 1, that Mr. Hanley committed at least three uses of force that were not necessary or reasonable and simply failed to follow through with the second part of the analysis required for a case where a police officer is accused of criminal conduct during a use of force in their capacity

as a peace officer.[6] The Hearing Committee failed to provide any grounds beyond the lack of a Superior Court conviction to support its conclusion that Mr. Hanley did not violate § 11-5-3 and therefore the Hearing Committee failed to provide any competent evidence to support its conclusion that Mr. Hanley did not violate § 11-5-3. *See City of East Providence v. McLaughlin*, 593 A.2d 1345, 1348 (R.I. 1991) ("In our review of the committee's findings, we shall neither weigh the evidence nor make findings of fact; instead, we shall examine the extensive record to determine whether some competent evidence exists to support the committee's decision.") (citation omitted); *Preservation Society of Newport County*, 155 A.3d at 692 ("Our task is to scour the record to discern whether any legally competent evidence supports the lower tribunal's decision and whether the decision-maker committed any reversible errors of law in the matter under review. . . . *If* legally competent evidence exists to support that determination, we will affirm it unless one or more errors of law have so infected the validity of the proceedings as to warrant reversal.") (internal quotation omitted) (emphasis added)). Here, upon review of the Hearing Committee's entire decision, this Court can find no legally competent evidence provided to support the Hearing Committee's decision as to Charge 9 because the decision is silent as to any relevant rationale explaining whether Mr. Hanley's conduct constituted simple assault and/or battery. This Court agrees Mr. Hanley was not convicted of violating § 11-5-3 in Superior Court, and further

[6] *See e.g.*, City of Providence Ex. 45 (2 of 3), *State v. Joseph Hanley – Verdict/Sentencing*, C.A. No. 61-2020-04072 at 22 (Mar. 18, 2021) Goldman, J. ("When a police officer is charged with a criminal offense which involves his use of force in his capacity as a peace officer, a two-part analysis needs to be undertaken . . . by the finder of fact which in this case is this Court. First, the Court must determine if the Defendant's use of force was necessary and reasonable utilizing the case law. If the Court finds the Defendant's conduct necessary and reasonable, then the inquiry ends and the Defendant is not guilty of the charge. If this Court however finds that the use of force was not necessary and not reasonable, the Court then determines if the conduct at issue meets the elements of simple assault or battery under Rhode Island General Law 11-5-3.").

agrees that G.L. 1956 § 12-18-3[7] provides that Mr. Hanley's specific type of plea "shall not constitute a conviction for any purpose," and yet these facts standing alone are insufficient, as a matter of law, to support the Hearing Committee's conclusion as to Charge 9. Without any competent evidence to support the Hearing Committee's decision as to Charge 9, this Court cannot affirm the Hearing Committee's decision.

VII

Conclusion

Based on the foregoing, this Court reverses and remands the Hearing Committee's decision because the City's substantial rights were prejudiced by the Hearing Committee's decision being founded upon one or more errors of law that irreparably infected the validity of the proceedings. It is so ordered.

[7] G.L. 1956 § 12-18-3(a) states in pertinent part: "Whenever any person shall be arraigned before the district court or superior court and shall plead nolo contendere, and the court places the person on probation pursuant to § 12-18-1, then upon the completion of the probationary period, and absent a violation of the terms of the probation, the plea and probation shall not constitute a conviction for any purpose."

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**City of Providence v. Hanley**
CASE NO:	**PC-2025-03678**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 13, 2026**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Vincent F. Ragosta, Jr., Esq.** **D. Peter DeSimone, Esq.**
For Defendant:	**Michael Colucci, Esq.**