STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 4, 2013)

DONNA FRANCIS and DONNA HASSELL	:	
vs.	:	**C.A. No. PC 07-6005**
RETIREMENT BOARD OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND and EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

MCGUIRL, J., Before the Court are consolidated appeals from the Retirement Board of the Employees' Retirement System of the State of Rhode Island ("Board") and the Employees' Retirement System of the State of Rhode Island ("Retirement System") (collectively, "ERSRI") filed by Donna Francis ("Ms. Francis") and Donna Hassell ("Ms. Hassell") (collectively, "Plaintiffs"). The Plaintiffs appeal the Board's conclusion that neither of them qualified as "employees" for purposes of purchasing prior service credits for specified time that they worked at the Rhode Island Department of Education (Dept. of Educ.). Jurisdiction is pursuant to G.L. 1956 § 42-35-15.[1]

[1] In addition to appealing pursuant to G.L. 1956 § 42-35-15, Plaintiffs also are seeking relief under G.L. 1956 § 9-30-1, the Declaratory Judgments Act. However, the Complaint does not specify the declaratory relief that Appellants are seeking. Furthermore, even if it did, the allegations in the Complaint are not sufficient to qualify as an exception to the requirement that they exhaust their administrative remedies before seeking declaratory relief. See Town of Richmond v. Rhode Island Dept. of Environmental Management, 941 A.2d 151, 156 (R.I. 2008) ("Although exhaustion of administrative remedies is a mandatory condition precedent to judicial review under § 42-35-15, th[e] Court has recognized that in certain instances a party may seek declaratory relief in the Superior Court. Such circumstances generally arise in the context of a rule or practice of the agency that is challenged as unconstitutional or in excess of the agency's statutory authority."). Consequently, the Court only will address the issues raised in the context of an appeal under § 42-35-15.

I

Facts and Travel

The Retirement System is a contributory retirement plan that was established by the General Assembly "for the purpose of providing retirement allowances for employees of the state of Rhode Island under the provisions of chapters 8–10, of this title." General Laws 1956 § 36-8-2. It is undisputed that both Ms. Francis and Ms. Hassell previously worked for the Dept. of Educ. in the position of "cook's helper." In that position, they each were assigned to a fifteen-hour work week, with an additional ten hours per week of mandatory on-call time. They are seeking to purchase prior service credits from ERSRI for the period of time that they maintained those positions. The specific facts as they relate to each Plaintiff shall be set forth below.

A

Ms. Francis

On November 3, 2000, Ms. Francis informed ERSRI that she had been working for the state since January 21, 1987, and she requested that the Board inform her when she would be vested with the state and how much it would cost for her to buy prior service credits for the years that she had worked part-time. See Amended Designation of Record of Administrative Appeal ("Rec.") Exhibit ("Ex.") 1. ERSRI stated in an invoice that Ms. Francis could purchase prior service credits in the amount of $3,129.61, including interest, for the period covering January 20, 1987 to November 17, 1991. See Rec. Ex. 2. The due date for said purchase was set as January 22, 2001. Id. Ms. Francis did not purchase the prior service credits during that period.

On July 31, 2002, Ms. Francis requested ERSRI to recalculate the purchase price of the same prior service credits. See Rec. Ex. 3. On May 19, 2005, ERSRI informed Ms. Francis that she was not qualified to purchase prior service credits because the Dept. of Educ. had indicated

to ERSRI that she had worked less than twenty hours per week during that period, and that as such, Ms. Francis did not meet the statutory definition of "employee" for purposes of purchasing prior service credits. See Rec. Ex. 5; see also § 36-8-1(8).[2]

On May 26, 2005, Ms. Francis wrote to ERSRI Executive Director Frank Karpinski ("Mr. Karpinski"). See Rec. Ex. 6. She stated that when she was hired in 1987, she involuntarily was placed into a fifteen-hour per week floating position, and she again requested that she be permitted to purchase prior service credits for period beginning January 20, 1987 to November 17, 1991. See id.

On January 3, 2006, similar to the previous correspondence that she had received from ERSRI, Mr. Karpinski informed Ms. Francis that she did not qualify as an employee during the stated period for purposes of purchasing prior service credits. See Rec. Ex. 11 at 1.[3] As a result, he officially denied the purchase request and informed Ms. Francis of her statutory right to appeal the decision. See id. at 1-2. Ms. Francis appealed the denial on January 10, 2006, and she requested a formal hearing. See Rec. Ex. 12.

B

Ms. Hassell

In 1977, Ms. Hassel commenced a part-time position with the Dept. of Educ. in the School Lunch Program and continued in that position through 1983. Apparently, Ms. Hassel made retirement contributions to ERSRI from September 24, 1979 to October 10, 1981. On September 8, 1982, Ms. Hassell applied for a refund of those retirement contributions. See Rec. Ex. 14. On March 27, 1992, ERSRI granted Ms. Hassell's request to purchase back the prior

[2] At the time, definition of the term "employee" was contained in § 36-8-1(8). It since has been redesignated and now is set forth in § 36-8-1(9). See P.L. 2011, ch. 363, § 27. However, this Decision will cite to the statute as it was in effect during the relevant period.

[3] The letter of denial was dated January 3, 2005; however, this appears to be a typographical error. ERSRI's Memorandum to this Court indicates that the letter was written on January 3, 2006.

service credits that she previously had withdrawn, and it billed her in the amount of $915.25, including interest. See Rec. Ex. 15. Ms. Hassell duly paid the specified sum to ERSRI. See Rec. Ex. 16.

Ms. Hassell later made a request to purchase prior service credits for the 1977 to 1983 period that she had worked part-time for the School Lunch Program, excluding the prior service credits that she previously had purchased in 1992. On December 22, 2005, Mr. Karpinski informed Ms. Hassell that she did not qualify as an employee for purposes of purchasing prior service credits because she had not provided any evidence that she had worked over twenty hours per week during the relevant period. See Rec. Ex. 19 at 1. As a result, on behalf of ERSRI, he officially denied Ms. Hassell's purchase request and her statutory right to appeal the decision. Id. at 2. Ms. Hassell timely appealed the decision. See Rec. Ex. 20.

C

The Hearings

Considering that both appeals contained "similar facts and legal issues[,]" Mr. Karpinski requested the hearing officer to schedule consecutive hearings at one session "in order to preserve ERSRI resources and to expedite two such similar matters." See Rec. Ex. 29. Accordingly, on May 25, 2006, hearings were conducted on the appeals. See Rec. Ex. 30 ("Transcript" or "Tr. I"). Both Plaintiffs appeared pro se.

Ms. Francis testified that when she was hired on January 20, 1987, she was "involuntarily placed into a floating position working 35 hours per week[,]" but that "when it was my time to bid on the school, the only positions left were 15-hour-per-week positions." (Tr. I at 7). As a result, "I worked for the state in a 15-hour-a-week position from January 20th, 1897 to November 11, 1991." Id. at 8. However, Ms. Francis also testified that when she had been told

that she would have to go through a bidding process, and that "if you did get a 15-hour position, we were told that we could work more hours, up to 35, more or less, on call. If we got a call in the morning from the prep center, we were required to go in. That was part of our job." Id. 23-24. Ms. Francis was asked "when you came on board in January of 1987, how many hours a week were you working on average?" Id. at 25. Ms. Francis responded:

> "Well to be honest with you, I really don't know. I'd say, on average, probably the 15. But I did—I know I worked over. But to give you an exact number, I'm sorry, I just can't remember back that far back." Id. at 25.

Ms. Hassell similarly testified that when she was hired, she "was placed in an involuntary 15-hour-per-week position." Id. at 32. She then testified:

> "Later, however, I was hired full time and I contributed to the retirement system. Subsequently, I was bumped back down to part time during October 1981 through February of 1983. When the memo came to me stating I was no longer eligible to contribute to the retirement system, they also sent a refund retirement contributions form." Id.

She then maintained that at a minimum, she should be allowed to purchase prior service credits for the period when she was bumped back down to part-time service after having worked on a full-time basis. See id. at 35. Ms. Hassell later acknowledged that when she applied for the position, she was aware that her hours could vary depending upon departmental needs. Id. at 45.

Mr. Karpinski then testified on behalf of ERSRI. See id. at 62. According to Mr. Karpinski,

> "any school state lunch employee who is a member of the system—meaning you had to contribute, you had to have started as a member contributing as a full-time employee, you had to be at least 20 hours. So the day you started, you had to begin to contribute, and then you had to be involuntarily transferred." Id. at 74.

The following colloquy then took place:

"Q. All right. So based on the information that she [Ann T. Blanchard, Fiscal Clerk, Dept. of Educ.] sent, you could not verify that either of the appellants had been full-time contributing employees?

A. Correct. Well if they were full-time contributing employees, we would have had contributions. From the first day, there is no contribution —

Q. You have no record of any contributions from either appellant?

A. That's correct. On their date of hire. And, again, based on the statute saying who is a member, and we would interpret who is a member. . . .

Q. Your testimony is, then, based on the information that you received from Mrs. Blanchard at the Department of Education Office of Finance, based on that information, you concluded that these two appellants had not been full-time employees on the date of hire?

A. Correct.

Q. And had not contributed to the Employees' Retirement System?

A. Correct. And that they were not floaters." Id. at 75.

A discussion of the term "floater" then ensued:

A. [I]t was determined that, if we could not establish that there were contributions, a floater would be analogous to a contributing member, because it would have been more than 20 hours a week, based on a decision that we had prior to.

So we said, if we can't see contributions, and it has been brought to us that a floater may work more than 20 hours per week and be a full-time employee, we will then treat that as if he were a full-time employee, thus, you meet the statutory language. And then we would say, 'You can buy that time because you should have been a contributing member, or could have been a contributing employee.'

Q. So if you received information that any individual, individuals, were considered floaters, then would they meet the criteria, even if they had not been a contributing member at the time?

A. Yes.

Q. Even if they had not worked 20 hours?

A. If the numbers were so far away that we could not reasonably confirm, if we could not consistently confirm that they were not 20-hour employees, we would not have been able to take the floater position.

> If the floater only worked 10 hours per week, and it was evident by the salary being paid, we would have said 'Even if it's a floater, but it's clear that you're not working enough hours, then we're going to go back and certify that they didn't meet the threshold either.'
>
> The whole premise behind the floater was that there was not any information available for either salary or hourly wage. There was some pocket of information not available to us." Id. at 76-77.

Mr. Karpinsky stated that even though "a scheduled employee of 15 hours" may work more than fifteen hours, ERSRI does not consider that person to necessarily be a floater; rather, he likened such a situation to that of a full-time employee who works overtime. Id. at 80-81. To illustrate this point, he testified:

> "what we're looking for the employer to say is that their hours are between 20 and 40 a week, versus saying—because if you look at the varying positions that we see members doing, there are people who are—for example, at the city and town level, they purposely hire people at 19 hours a week so that they don't meet the 20-hour threshold.
>
> And, thus, towns may not provide health care benefits and the whole nine yards. So they purposely work 19. So what we're trying to ascertain is, are you a 19-hour employee and, if you work one more, is it just a blip on the radar screen. Or is it a role in which you may float, and it may be normal to see you fluctuate up and down in that payroll. And we need to have the employer certify that to us." Id. at 81-82.

When later asked why Ms. Hassel had been refused the opportunity to purchase prior service credits for the period of time after she returned from a full-time position to that of a part-time position, Mr. Karpinski responded:

> "Her first day on the job was 1977, and that did not constitute full-time employee, and she didn't contribute. You had to be a full-time member first. And that's the time she took out, we could let her buy back." Id. at 84-85.

He then testified that "the threshold has to be, you have to be a full-time employee first. In 1977, there is no evidence that we can conclude that [Ms. Hassell was] a full-time employee."

Id. at 85. Mr. Karpinski acknowledged that Ms. Hassell had contributed to the Retirement System for an intervening period, but stated:

> "The retirement board does not take contributions. Contributions are given to the retirement board based on some type of an employment practice. So if the employer deemed it to be a full-time employee or employer, they will go ahead and take a contribution based on the statute. But we're not, in essence, going into every employer and saying, 'Tell us what you have?'" Id.

On February 28, 2007, the hearing officer issued her decision affirming ERSRI's denial of Plaintiffs' requests to purchase prior service credits. See Rec. Ex. 31. In doing so, the hearing officer concluded:

> "the prior time verification of less than twenty (20) hours per week, the lack of documentation regarding the full time contributing employee status at date of hire, and the absence of a 'floater' certification all combine to support the decision of the Employees' Retirement System relative to the Appellants denying their respective request to purchase the prior service credit referred to above." Id. at 5.

The Plaintiffs appealed this decision to the Board, and the Board conducted a hearing on September 12, 2007. See Rec. Ex. 32 (Tr. II). After the hearing, the Board affirmed the hearing officer's decision by an eight-to-six vote. See Tr. II at 36-37. The Plaintiffs timely appealed to this Court.

II

Standard of Review

This Court's review of a decision of the Retirement Board is governed by chapter 35 of title 42 of the General Laws, entitled the Administrative Procedures Act. The applicable standard of review is codified in § 42-35-15 and provides:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if

> substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15.

When acting pursuant to § 42-35-15, the Superior Court sits as an appellate court with a limited scope of review. See Mine Safety Appliances v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). Thus, the Court's review is confined "to an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision." Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)); see also § 42-35-15(e). If the agency decision is based on competent evidence in the record, the reviewing court must affirm the agency's decision. Nolan, 755 A.2d at 805 (citing Barrington Sch., 608 A.2d at 1138).

Thus, the Court's review of an administrative agency's decision under § 42-35-15 is limited in scope. See Mine Safety Appliances v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). It must give great deference to an agency's final decision. See Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2005) ("The law in Rhode Island is well settled that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.") (quoting In re Lallo, 768 A.2d 921, 926 (R.I. 2001)). Furthermore, "[w]hen a trial court reviews a decision of an agency, the court may affirm or reverse the decision or may remand the case for further proceedings." Birchwood Realty, Inc. v.

Grant, 627 A.2d 827, 834 (R.I. 1993) (citing § 42-35-15(g)). An agency's decision "can be vacated if it is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record." Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

However, this Court "'may not, on questions of fact, substitute its judgment for that of the agency whose action is under review,' . . . even in a case in which the court 'might be inclined to view the evidence differently and draw inferences different from those of the agency." Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (internal citations omitted). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1971). Importantly, however, [q]uestions of law . . . are not binding upon the court and may be reviewed to determine what the law is and its applicability to the facts." Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (R.I. 1977).

III

Analysis

The Plaintiffs assert that the Board misconstrued the statutory definition of the term "employee" in denying their requests to purchase prior service credits. They maintain that because they devoted twenty hours or more to the service of the state, they met the statutory criteria for membership in the Retirement System. They further maintain that because the Board previously interpreted § 36-8-1(8) to include similarly-situated school lunch employees as eligible for retirement benefits, it is estopped from arbitrarily denying them the same benefits. ERSRI counters that to be eligible for retirement benefits, an employee must work a minimum of

twenty hours per week, and that Plaintiffs failed to prove that they actually worked the requisite hours.

A

Statutory Interpretation

At issue is interpretation of the word "devotes" as used in § 36-8-1(8) which defined the term "employee" for purposes of eligibility for retirement benefits. The Plaintiffs contend that use of this term evidences an intention by the General Assembly to include those individuals who are required to be available to work for a stated period of time per week even if, in fact, they do not actually perform that work. ERSRI disagrees. Consequently, this case involves a question of statutory interpretation which, of course, is an issue of law that is examined on a de novo basis. See Waterman v. Caprio, 983 A.2d 841, 844 (R.I. 2009).

The fundamental goal in reviewing a statute "is to give effect to the General Assembly's intent[.]" DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011). In doing so, the Court is required to "determin[e] and effectuat[e] that legislative intent and attribut[e] to the enactment the most consistent meaning." Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011) (quoting In re Almeida, 611 A.2d 1375, 1382 (R.I.1992)).

In Ryan, our Supreme Court explained how the General Assembly's intent should be discerned from the language of a statute:

> "That intent is discovered from an examination of the language, nature, and object of the statute. It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings. This is particularly true where the Legislature has not defined or qualified the words used within the statute. In giving words their plain meaning, however, we note that this approach is not the equivalent of myopic literalism. When we determine the true import of statutory language, it is entirely proper for us to look to the sense and meaning fairly deducible

> from the context. As we previously have held, it would be foolish and myopic literalism to focus narrowly on one statutory section without regard for the broader context." Ryan, 11 A.3d at 71 (internal citations and quotations omitted).

Additionally, the Court always must remain "mindful of the longstanding principle that statutes should not be construed to achieve meaningless or absurd results." McCain v. Town of North Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012) (internal citations omitted). Accordingly, when considering a statute in its entirety, "individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Ryan, 11 A.3d at 71.

In the context of administrative appeals, it is "a well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency." Pawtucket Power Associates Ltd. Partnership v. City of Pawtucket, 622 A.2d 452, 456 (R.I. 1993). Accordingly, as our Supreme Court has declared:

> "when a statute is susceptible of more than one meaning, we must subscribe to the canon of statutory construction that gives due consideration to the agency's interpretation. To resolve which of the two or more permissible statutory interpretations will control, we give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized . . . In effect, [t]he interpretation of a statute by the administering agency is not controlling, but it is entitled to great weight. This level of deference is applied even when the agency's interpretation is not the only permissible interpretation that could be applied. Nonetheless, we do not . . . afford an agency's statutory interpretation deference in every case. It is only when we are faced with an ambiguous statute and must resort to maxims of statutory construction that this Court will give weight to the agency's articulated interpretation. And of course, regardless of ambiguities or deference due, this Court always has the final say in construing a statute." In re Proposed Town of New Shoreham Project, 25 A.3d 482, 505-06 (R.I. 2011) (internal citations and

quotations omitted).

Chapter 8 of title 36 regulates the administration of the state retirement system. Section 36-8-3 provides: "The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of chapters 8–10 of this title are hereby vested in a retirement board." Accordingly, the Board is required to "establish rules and regulations for the administration and transaction of the business of the retirement system." Id.

In order for an individual to become a member of the retirement system, and thus be eligible to enjoy the benefits of membership, that individual must be an "employee" as defined by statute. See § 36-9-2 ("All employees as defined in chapter 8 of this title who became employees on or after July 1, 1936 shall, under contract of their employment, become members of the retirement system . . . .") Chapter 8 of title 36 defines an employee as

> "any officer or employee of the state of Rhode Island whose business time is devoted exclusively to the services of the state, but shall not include one whose duties are of a casual or seasonal nature. The retirement board shall determine who are employees within the meaning of this chapter. The governor of the state, the lieutenant governor, the secretary of state, the attorney general, the general treasurer, and the members of the general assembly, ex officio, shall not be deemed to be employees within the meaning of that term unless and until they elect to become members of the system as provided in § 36-9-6, but in no case shall it deem as an employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state and who receives less than the equivalent of minimum wage compensation on an hourly basis for his or her services, except as provided in § 36-9-24. Any commissioner of a municipal housing authority or any member of a part-time state, municipal or local board, commission, committee or other public authority shall not be deemed to be an employee within the meaning of this chapter." Sec. 36-8-1(8) (emphasis added).

Thus, § 36-8-1(8) defines the term employee for purposes of determining membership of the retirement system as one "whose business time is devoted exclusively to the services of the

state . . . ." Sec. 36-8-1(8) (emphasis added). The General Assembly then set forth specific exclusions from the definition, such as individuals who work on a casual or seasonal basis, and those who work in various governmental positions. See id. The ultimate determination as to who qualifies as an employee is delegated to the Board. See id. ("The retirement board shall determine who are employees within the meaning of this chapter."). This delegation, however, is with limitations. For instance, "in no case shall [the Board] deem as an employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state . . . ." Id.

Seizing on the term "devotes," and relying upon Webster's Dictionary definition of the term "devote" as "to give over or direct (as in time, money, or effort) to a cause, enterprise, or activity[,]" Plaintiffs contend that they constituted employees for purposes of § 36-8-1(8). See Memorandum of Law in Support of Petitioners' Administrative Appeal at 4. According to Plaintiffs, there was substantial evidence in the record to show that they "directed their time and effort to the service of the State for a total of twenty-five (25) hours per week" because, each week, they were assigned to a specific school for fifteen hours, and then spent an additional ten hours "on-call for the 'Main Prep Center[.]'" Id. Thus, they argue, "[h]aving 'devoted' a minimum of twenty five (25) hours per week to the service of the State, by virtue of their fifteen hours of regularly scheduled work time combined with an additional ten hours of on-call time, [Plaintiffs] fulfill the statutory requirement of at least twenty hours per week in the service of the State." Id. at 4-5.

The term "devote" is defined as "To give or apply (one's time, attention, or self) entirely to a particular activity, pursuit, cause, or person." The American Heritage Dictionary of the English Language 497 (4th ed. 2000) (emphasis added). The term "service" is defined as

"Employment in duties or work for another, as for a government: has been in the company's service for 15 years." Id. at 1591 (emphasis in original).

The Board interpreted § 36-8-1(8) to mean that only those individuals who actually work twenty hours or more per week can be considered employees for purposes of the statute. Given that the term "devote" means to apply one's time entirely to a particular activity, and that the term "service" means duty or work for another, the Court cannot conclude that the Board's interpretation clearly was wrong because, in accordance with § 36-8-1(8), in order to qualify as an employee, an individual is required to "devote[]" at least twenty hours per week of his or her "business time" "exclusively" to state service. See id. The Plaintiffs' arguments aside, an individual who is "on call" is not exclusively devoting his or her business time to the service of the state.

The Board's interpretation is buttressed by a review of the statutory scheme governing payments into the retirement system. Once an individual is deemed an employee for purposes of eligibility for membership of the retirement system, said member is required to contribute a percentage amount "of his or her compensation as his or her share of the cost of annuities, benefits, and allowances." Sec. 36-10-1. Compensation is defined as "salary or wages earned and paid for the performance of duties for covered employment . . . ." Sec 36-8-1(7) (emphasis added).

According to the foregoing, employee-members of the retirement system must contribute into the system a certain percentage of their salary or wages for duties that actually are performed. Ms. Francis and Ms. Hassell do not, nor can they, allege that they received compensation for the time that they were on-call, yet they contend that this on-call time should be considered for purposes of eligibility for membership of the Retirement System.

The Court declines to adopt such an interpretation, given that the General Assembly specifically restricts membership of the retirement system to those who devote a minimum of twenty hours of service to the state and then requires those members to pay into the system a percentage of their compensation for duties performed. When an individual is on-call, that person is not performing duties for which he or she receives compensation; thus, he or she cannot be required to make payments into the system for that uncompensated time. Considering that an individual's contributions into the system are directly tied to earned compensation, the Court cannot conclude that the Board was clearly erroneous or unauthorized in finding that to qualify as an employee for purposes of the statute, an individual must perform a minimum of twenty hours of compensated service per week.

Section 36-9-24, entitled "Part-time school lunch employees" also provides support for the Board's interpretation of § 36-8-1(8). It provides in pertinent part:

> "(a) Whenever any state school lunch employee, who is a member of the system as a full-time employee is involuntarily transferred to a position of less than twenty (20) hours per week, the employee shall remain a contributing member of the retirement system and receive full credit for that part-time service, provided the service shall be at least fifteen (15) hours per week." Sec. 36-9-24.

According to this provision, when full-time school lunch employees are transferred involuntary into a position of less than twenty hours per week, they do not lose membership as long as they provide a minimum of fifteen service hours per week. Id. The implication of § 36-9-24 is that a school-lunch employee who provides less than twenty, but more than fifteen, service-hours per week is not eligible for membership of the retirement system unless that individual has been transferred involuntarily from a full-time position. Although Plaintiffs have suggested that when they were hired and assigned to their on-call positions and they involuntarily were transferred because they had sought full-time positions, there is nothing in the

record to suggest that they ever held full-time positions prior to commencing in their capacities as cook's helpers. Consequently, not only is this provision not applicable to Plaintiffs' situation, it impliedly supports the Board's determination that an individual must work at least twenty hours per week to qualify for membership of the retirement system.

Moreover, although the Court recognizes that Plaintiffs dispute the Board's interpretation of § 36-8-1(8) and offers an alternative one, considering that the Board is the entity charged with administering and enforcing the statute, and because its interpretation was not clearly erroneous or unauthorized, said interpretation is entitled to great weight and the Court must accord it deference. See In re Proposed Town of New Shoreham Project, 25 A.3d at 505-06. Consequently, the Court concludes that the Board was not clearly wrong when it determined that Plaintiffs were required to work for a minimum of twenty hours per week in order to qualify as employees for purposes of qualifying for membership of the retirement system.

B

Disparities in Treatment

The Plaintiffs next contend that ERSRI previously determined that Plaintiffs were employees within the meaning of § 36-8-1(8) when it previously gave them permission to purchase service credits. They further assert that ERSRI "has consistently allowed 15 hour School Lunch Employees to purchase service credits, thereby suggesting that it has historically considered them members of the Retirement System" and, in support of this assertion, pointed to two fifteen-hour school-lunch employees who previously had been permitted to purchase service credits. Pls.' Reply Mem. In Support of Admin. Appeal at 4. The Plaintiffs then maintain that as a result, ERSRI may not now alter this previously established interpretation, particularly because it is prohibited from selectively interpreting the statute under § 36-8-8.2.

Essentially, Plaintiffs' allegation sounds in equitable estoppel; namely, that ERSRI is equitably estopped from denying their requests to purchase service credits based upon its prior actions with regard to other employees. They also contend that at least two other fifteen-hour school-lunch employees received more favorable treatment in violation of § 36-8-8.2(b). For the reasons set forth below, the Court rejects both of these assertions.

Assuming that Plaintiffs actually are asserting that ERSRI is equitably estopped from denying their requests, they have failed to sustain their burden of proof with respect to this issue. See Murphy v. Murphy, 714 A.2d 576, 581 (R.I. 1998) (commenting that the "burden of proof is upon party alleging equitable estoppel"); Lichtenstein v. Parness, 81 R.I. 135, 138, 99 A.2d 3, 5 (1953) ("The burden of proving the elements of such a claim is upon the one who asserts it.")

A party invoking the doctrine of equitable estoppel must establish the following elements:

> "first, an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, [proof] that such representation or conduct in fact did induce the other to act or fail to act to his [or her] injury." McNulty v. City of Providence, 994 A.2d 1221, 1225 (R.I. 2010) (quoting Providence Teachers Union v. Providence School Board, 689 A.2d 388, 391–92 (R.I. 1997)).

In the instant matter, when both Plaintiffs began their employment with the state, neither of them contributed into the retirement system as full-time employees. This situation continued for many years before they indicated that they wished to purchase service credits. There is no evidence in the record, however, that ERSRI ever made any statements regarding their status as employees for purposes of qualifying for retirement benefits upon which Plaintiffs relied to their detriment.

Although ERSRI did inform Ms. Francis that she was eligible to purchase service credits, it later retracted that decision when it realized that it had made a mistake by misconstruing the statute. While Ms. Francis might argue that she relied upon this determination to her detriment, there is nothing in the record that would support such assertion. With respect to the other fifteen-hour school-lunch employees who were permitted to purchase service credits, even if they were similarly situated to Plaintiffs when they were permitted to purchase service credits, such action would have been ultra vires and could not serve as the basis for applying the doctrine of equitable estoppel. See Waterman v. Caprio, 983 A.2d 841 (R.I. 2009) ("This Court will not entertain an estoppel claim when a governmental employee's actions clearly are ultra vires."); Kulawas v. Rhode Island Hosp., 994 A.2d 649, 655 (R.I. 2010) (observing that estoppel is not available where relied-upon statements are erroneous and ultra vires); Romano v. Retirement Bd. of the Employees' Retirement System, 767 A.2d 35, 40 (R.I. 2001) (stating that "estoppel cannot be applicable when the acts in question are 'clearly ultra vires'"). In light of the foregoing, the Court concludes that Plaintiffs failed to sustain their burden of proving the elements of equitable estoppel. Consequently, they may not rely upon this theory for relief.

The Plaintiffs also maintain that when it qualified other fifteen-hour school-lunch employees for retirement benefits, ERSRI violated § 36-8-8.2(b) by treating those employees more favorably than it did Plaintiffs. Section 36-8-8.2(b) provides: "The retirement board shall take no administrative action conferring special benefits upon any individual or group of individuals." Assuming that the fifteen-hour school-lunch employees cited by Plaintiffs actually were similarly situated to Plaintiffs, and assuming that they did receive favorable treatment, then the alleged favorable treatment would have been ultra vires and would not permit ERSRI to accord the same treatment to Plaintiffs. Notwithstanding this conclusion, however, Plaintiffs

have not demonstrated that any favorable treatment actually occurred in violation of § 36-8-8.2(b).

Although Plaintiffs complain that there exist fifteen-hour school-lunch employees who are qualified to receive benefits, Plaintiffs have provided no evidence as to how these individuals were deemed qualified as employees for purposes of purchasing service credits. As stated previously, full-time school-lunch employees who are members of the system do not lose their membership if they are transferred involuntary into positions of less than twenty hours per week, provided they work a minimum of fifteen service hours per week. See § 36-9-24. Thus, while Plaintiffs assert that the individuals in question received favorable treatment compared to the treatment that they received, they have provided no evidence that these individuals, in fact, were similarly situated; namely, that they were not transferred involuntarily from full-time positions and, thereby, were eligible to be members of the retirement system pursuant to § 36-9-24.

Considering this lack of evidence, the Court is in no position to determine whether ERSRI violated § 36-8-8.2(b). Consequently, Plaintiffs cannot prevail with respect to this allegation.

C

Evidence of Hours Worked

The Plaintiffs contend that the evidence demonstrated that they "routinely worked more than the 15 hours per week for which they were scheduled." See Memorandum of Law in Support of Petitioners' Administrative Appeal at 6. However, Plaintiffs acknowledge that "[w]hile the documentation clearly showed Francis did not often exceed the 20 hour threshold required by the statute, it also shows that she was on-call for additional hours beyond her 15 hour schedule and routinely worked those additional hours." Id. Similarly, Plaintiffs admit that

"Plaintiff Hassell's payroll documentation reveals a similar trend . . . [and] that, like Plaintiff Francis, she was required to be on-call for additional hours beyond her 15 hour schedule and routinely worked those hours, even if she did not always meet or exceed the 20 hours required by statute." Id.

At the hearing, Mr. Karpinsky compared floaters, so-called, to scheduled fifteen-hour employees. He indicated that floaters who consistently work twenty hours or more per week are treated as full-time employees for purposes of qualifying for the retirement system. He then likened scheduled fifteen-hour per week employees who work over fifteen hours in a given week to employees who work overtime.

A review of the record, as well as Plaintiffs' own admissions, reveal that even though they may have "routinely" worked more than their scheduled fifteen-hour work weeks, they "did not always meet or exceed" twenty hours of work per week. As such, Plaintiffs did not qualify as floaters for purposes of qualifying for the retirement system. Thus, even though Plaintiffs asserted that they routinely worked more than fifteen hours per week, they did not prove that they devoted twenty hours or more per week to the service of the state, as required by § 36-8-1(8) (stating "in no case shall [the retirement board] deem as an employee, for the purposes of this chapter, any individual who devotes less than twenty (20) business hours per week to the service of the state"). Consequently, the Board did not err in denying Plaintiffs' applications to purchase service credits on the basis of actual hours worked.

D

Ms. Hassel's Prior Service Credits

The record reveals that Ms. Hassell made retirement contributions to ERSRI from September 24, 1979 to October 10, 1981, that she then obtained a refund of those contributions, and then she later purchased back those prior service credits. Thus, on September 8, 1982, Ms. Hassell applied for a refund of her retirement contributions. See Rec. Ex. 14. On March 27, 1992, ERSRI granted Ms. Hassell's request to purchase back the prior service credits that she previously had withdrawn, and it billed her in the amount of $915.25, including interest. See Rec. Ex. 15. Ms. Hassell duly paid the specified sum to ERSRI. See Rec. Ex. 16.

In the instant controversy, the record reveals that Ms. Hassell made a request to purchase prior service credits for the 1977 to 1983 period that she had worked part-time for the School Lunch Program, excluding the prior service credits that she previously had purchased in 1992. When asked why Ms. Hassel had been refused the opportunity to purchase prior service credits for the period of time after she returned from a full-time position to that of a part-time position, Mr. Karpinski responded:

> "Her first day on the job was 1977, and that did not constitute full-time employee, and she didn't contribute. You had to be a full-time member first. And that's the time she took out, we could let her buy back." Id. at 84-85.

He then testified that "the threshold has to be, you have to be a full-time employee first. In 1977, there is no evidence that we can conclude that [Ms. Hassell was] a full-time employee." Id. at 85.

Mr. Karpinski acknowledged that Ms. Hassell had contributed to the retirement system for an intervening period, but stated:

> "The retirement board does not take contributions. Contributions are given to the retirement board based on some type of an employment practice. So if the employer deemed it to be a full-time employee or employer, they will go ahead and take a contribution based on the statute. But we're not, in essence, going into every employer and saying, 'Tell us what you have?'" Id.

On February 28, 2007, the hearing officer issued a decision affirming ERSRI's denial of Plaintiffs' requests to purchase prior service credits. See Rec. Ex. 31. In doing so, the hearing officer concluded:

> "the prior time verification of less than twenty (20) hours per week, the lack of documentation regarding the full time contributing employee status at date of hire, and the absence of a 'floater' certification all combine to support the decision of the Employees' Retirement System relative to the Appellants denying their respective request to purchase the prior service credit referred to above." Id. at 5.

This conclusion suggests that Ms. Hassell, a part-time lunch employee, only could have qualified as a contributing member of the system based upon her status at the date of hire, or through her subsequent certification as a floater. Indeed, Mr. Karpinski's testimony appears to suggest that for Ms. Hassell to qualify as a member, it was necessary for her to be a full-time employee on the date of her hire.

However, although it is clear from the record that Ms. Hassell was not a full-time contributing employee at the time she was hired, and while there is no evidence that she ever received "floater" certification, it is undisputed that she did contribute into the system from September 24, 1979 to October 10, 1981—presumably because she had been deemed to be a full-time employee member of the system during that period. Notwithstanding, the hearing officer's conclusion fails to explain or take into account the period of time when Ms. Hassell actually was a member of the system.

Section 36-9-24(a) clearly states that:

> "Whenever any state school lunch employee, who is a member of the system as a full-time employee is involuntarily transferred to a position of less than twenty (20) hours per week, the employee shall remain a contributing member of the retirement system and receive full credit for that part-time service, provided the service shall be at least fifteen (15) hours per week." Sec. 36-9-24(a).

There is no requirement in this language that an employee first must be hired as a full-time employee before being eligible to avail of this provision. Indeed, any such requirement would undermine the purpose of the statute because it would permit the state to hire all of its school-lunch employees initially on a part-time basis, and then later convert them to full-time status, thus denying them the opportunity to join the retirement system. Such a result would render the statute meaningless.

The fact that Ms. Hassell was a contributing member from September 8, 1979 until October 10, 1982, supports her claim that she involuntarily was transferred to a position of less than twenty hours after that period. ERSRI has provided no evidence to the contrary. Consequently, pursuant to § 36-9-24(a), the Court concludes that Ms. Hassell is entitled to purchase prior service credits for the requested period after October 10, 1982.

IV

Conclusion

After a review of the entire record, this Court concludes that the Board's denial of the request of Ms. Francis to purchase prior service credits was supported by reliable, probative, substantial, and legally competent evidence and was not in violation of statutory provisions. The Board's decision also was not affected by error of law and was not characterized by an abuse of discretion. Substantial rights of Ms. Francis have not been prejudiced. Accordingly, this Court upholds the Board's decision to deny the request.

With respect to Ms. Hassell's request to purchase prior service credits, the Board's denial of her request with respect to the period of time prior to September 24, 1979 was supported by reliable, probative, substantial, and legally competent evidence and was not in violation of statutory provisions. This decision also was not affected by error of law and was not characterized by an abuse of discretion. Substantial rights of Ms. Hassell concerning this portion of her request have not been prejudiced. Accordingly, this Court upholds this part of the Board's decision.

However, with respect to the Board's denial of her request concerning the time period after October 10, 1982, it was not supported by reliable, probative, substantial, and legally competent evidence and was in violation of statutory provisions. This portion of the decision also was affected by error of law and was characterized by an abuse of discretion. Substantial rights of Ms. Hassell concerning this aspect her requests have been prejudiced. Accordingly, this Court reverses this part of the Board's decision.