**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(Filed: April 26, 2012)**

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| **NANCY LANGLOIS** | : | |
| | : | |
| **v.** | : | **C.A. No. PC 2010-0909** |
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| **FRANK T. CAPRIO, GENERAL TREASURER IN HIS CAPACITY AS CHAIRMAN OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND** | : | |

## DECISION

**PROCACCINI, J.** Appellant Nancy Langlois ("Appellant") appeals from the decision of the Employees' Retirement System of Rhode Island ("ERSRI" or "Board"), wherein the Board unanimously affirmed the decision of the hearing officer Raymond Marcaccio ("Hearing Officer"). In that decision, the Hearing Officer affirmed the administrative decision of Frank Karpinski ("Karpinski"), Executive Director of ERSRI, denying Appellant's request for full service credit for the period of time between 1990 and 1994 during which she worked twenty-one hours per week in a thirty-five hour per week position and further denied Appellant's request to purchase the time. Jurisdiction is pursuant to Rhode Island General Laws 1956 § 42-35-15.

## I

## Facts and Travel

For twenty-eight years, Appellant worked as an engineering technician for the Rhode Island Department of Environmental Management ("DEM" or "Department"). In 1988, Appellant took a maternity leave from work, thereafter returning in 1990. Upon

Appellant's return to work in 1990, Appellant was placed in a different position within the Department. Sept. 10 Hr'g, 6:14-6:17. The new position accommodated Appellant's family situation by allowing her to work twenty-one hours per week in a thirty-five hour per week position. Appellant continually worked twenty-one hours per week, until returning to a thirty-five hour work week in 1994.

During the period of 1990-1994, in which Appellant worked a twenty-one hour work week, Appellant contributed to the Employees' Retirement System on a prorated basis and accordingly received fractional credit towards her retirement credit. Sept. 10 Hr'g, 82:11-83:3. Upon returning to her full time work week of thirty-five hours in 1994, Appellant's contribution to the Employees' Retirement System increased, and she thereafter began to receive one year of service credit towards her retirement for each year she worked a thirty-five hour work week. See Sept. 10 Hr'g, 54:15-55:8; see also Sept. 10 Hr'g, 58:12-58:17; Sept. 10 Hr'g, 65:15-65:19.

In January of 2009, Appellant applied to the Board to retire from DEM with twenty-eight years of service credit towards retirement. Subsequently, the Board denied Appellant's request, finding that she only had 26.2 years of service credit at the end of January 2009. Based upon the Board's computation of Appellant's service credit, Appellant would not be eligible to retire with twenty-eight years of service until December of 2010. Sept. 10 Hr'g, 16:14-16:16. Appellant disputed this computation, believing she had 27.6441 credits towards retirement, and therefore, Appellant assumed that she would be eligible to retire with twenty-eight years of service credit as of June of 2009. Sept. 10 Hr'g, 12:3-12:15.

As a result of the Board's denial, on March 11, 2009, Appellant sent a letter to Karpinski conveying her discrepancy with the Board's computation of her service credit. See Ex. 1. In her letter, Appellant expressed her understanding that "a state employee will receive one year of retirement credit for each year worked and contributed provided that [the employee] work[s] a minimum of twenty hours per week." (Ex. 1.) Based on this interpretation, Appellant believed she "would reach twenty-eight years of service sometime in April 2009 and was planning on retiring at that time." Id. Appellant further stated in her letter "there were occasions in which [she] was on Family Medical Leave." Id. According to Appellant, "this leave was on an as-needed basis." Id.

ERSRI responded to Appellant's letter on April 28, 2009, informing Appellant that according to ERSRI policy, "sporadic days off are not considered an official leave unless accompanied by official documentation supporting such a leave." (Ex. 2.) The letter further informed Appellant that in order to "qualify as an official leave or to receive full credit for employment of less than full time, [] ERSRI requires copies of substantive documentation from senior management which prospectively changed an employee's terms of employment and that documentation must consist of official notice to the State's personnel department advising that State of the change in employment terms." Id. In addition, the letter clarified § 36-8-1, defining "an employee as someone who works a minimum of 20 business hours per week." Id. Therein, the Board explained to Appellant that her interpretation of the statute, construing it to entitle her to one year of service credit towards retirement if she worked at least a minimum of twenty hours per week, was erroneous.

On May 22, 2009, Appellant's attorney, John D. Biafore, sent a letter to ERSRI, suggesting a hearing to resolve the issues. See Ex. 3. Subsequently, Karpinski issued an administrative denial of Appellant's request for full service credit for the years 1990 through 1994. See Ex. 4. In the denial, Karpinski explicated that "the law in no way suggests that a person hired in a 35 hour position is at liberty to reduce those hours and still receive full credit." (Ex. 4 at 1.) "Any reduction in hours will result in less service credit for that person." Id. at 2. Karpinski further denied Appellant's request for service credit towards retirement for the period of time in which she claims she was on "Family Medical Leave." Karpinski found that "sporadic days off and/or reduction in hours does not constitute an official leave." Id. at 3. Therefore, Karpinski denied Appellant's request "for full service credit and/or request to purchase the time." Id. Appellant then appealed the decision, requesting a hearing. See Ex. 5. Pursuant to Appellant's request, a hearing was scheduled for September 10, 2009.

At the hearing, the Hearing Officer heard testimony from Appellant and Karpinski. On December 14, 2009, the Hearing Officer issued a written decision whereby he affirmed the administrative decision of Karpinski. The Hearing Officer, in the decision, construed the issue as whether "[Appellant is] entitle[d] to purchase retirement service credit for the time that she worked 21 hours per week, while she remained in a 35-hour-per-week position." (Ex. 11 at 3, (hereinafter "Decision").) In determination of the issue, the Hearing Officer relied upon a paragraph in the Retirement System Handbook entitled "Can I purchase retirement service credit?" thereby finding that Appellant was "not on a leave of absence for the time for which she seeks to purchase service credit." Id. at 6-7. The Hearing Officer further determined that in order

for Appellant to be eligible to purchase service credit, she must have "been out on a leave of absence or laid off." Id. at 7. Since the Hearing Officer found that ERSRI "does not permit the purchase of service credit based upon a voluntary reduction of hours" under § 36-9-25.1, the Hearing Officer denied Appellant the right to purchase retirement service credit for the period of time between 1990 and 1994, during which Appellant worked twenty-one hours per week in a thirty-five hour per week position. Id. at 8.

Appellant appealed the Hearing Officer's decision averring that the Hearing Officer misconstrued the issues. See Ex. 12. Subsequently, a hearing was held wherein the Board voted unanimously to affirm the decision of the Hearing Officer. See Ex. 13. The Board thereafter issued a written decision affirming the Hearing Officer's decision on January 14, 2010. See Ex. 14. Appellant timely filed an appeal to this Court on February 11, 2010, pursuant to § 42-35-15.

## II

## Standard of Review

Pursuant to G.L. § 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 the Superior Court. Sec. 42-35-15. 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 the constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error or 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.

The scope of Superior Court review of an agency decision has been characterized as "an extension of the administrative process." Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board, 650 A.2d 479, 484 (R.I. 1994). As such, "judicial review is restricted to questions that the agency itself might properly entertain." Id. (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Association of Rhode Island v. State of Rhode Island Department of Business Regulation et al., 996 A.2d 91, 95 (R.I. 2010) (quoting Environmental Scientific Corp., 621 A.2d at 208). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Arnold v. Rhode Island Department of Labor and Training Board of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "some or any evidence supporting the agency's findings." Auto Body Association of Rhode Island, 996 A.2d at 95 (quoting Environmental Scientific Corp., 621 A.2d at 208).

Furthermore, deference is due to an agency's interpretation of its own rules and regulations. Gonzales v. Oregon, 546 U.S. 243, 244 (2006); Citizens Savings Bank v. Bell, 605 F. Supp. 1033, 1041 (D.R.I. 1985); State v. Cluley, 808 A.2d 1098, 1103 (R.I. 2002). Likewise, the Court will defer to an agency's interpretation of an ambiguous statute "'whose administration and enforcement have been entrusted to the agency . . .

even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Association of Rhode Island, 996 A.2d at 97 (quoting Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)). Moreover, "[A] reviewing court should accord an agency's decision considerable deference when that decision involves a technical question within the field of the agency's expertise." Rhode Island Higher Education Assistance Authority v. Department of Education, 929 F.2d 844, 857 (1st Cir. 1991) (internal quotations omitted). The Court will defer to an agency's interpretation so long as it is not clearly erroneous and unauthorized. Auto Body Association of Rhode Island, 996 A.2d at 97.

In addition, the Court must accord greater deference to a board's decision which adopts the finding of its hearing officer, who first made fact and credibility determinations after hearing live testimony. See Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 207-08 (R.I. 1993). Under the Board's two-tiered standard of review, the Court must confer this deference because "the further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the fact finder." Id. at 208.

**III**

**Analysis**

Appellant avers that in the decision the Hearing Officer misstated the issues as presented in this matter. Specifically, Appellant avers that the Hearing Officer considered the issue of whether Appellant is entitled to purchase retirement service credit, rather than the issue of whether Appellant is entitled to receive one full year of service credit for the years at issue, 1990 through 1994, in which Appellant worked

reduced hours. Appellant further avers that she is not looking to purchase retirement service credit for the period of time between 1990 and 1994, during which Appellant worked twenty-one hours per week in a thirty-five hour per week position.

Upon review of the Board's decision, it is apparent to this Court that the Hearing Officer misconceived and overlooked the primary issue pertaining to this matter. In deliberation of the matter, the Hearing Officer considered whether Appellant is "entitle[d] to purchase retirement service credit for the time that she worked 21 hours per week, while she remained in a 35-hour-per-week position." (Decision at 3.) In determination of his findings of fact and conclusions of law, the Hearing Officer found Appellant "not on a leave of absence for the time for which she seeks to purchase service credit," relying upon a paragraph in the Retirement System Handbook entitled "Can I purchase retirement service credit?" as being most helpful and relevant to the issue before him. Id. at 6-7. The Hearing Officer further determined that in order for Appellant to be eligible to purchase service credit, she must have "been out on a leave of absence or laid off." Id. at 7. Furthermore, the Hearing Officer determined that the ERSRI "does not permit the purchase of service credit based upon a voluntary reduction of hours" under § 36-9-25.1. Id. at 8. Hence, the Hearing Officer's findings of facts and conclusions of law relate to the issue of whether Appellant is entitled to purchase retirement service credit, thus failing to make any findings of fact and conclusions of law with respect to the primary issue of whether Appellant is entitled to receive one year of service credit towards retirement for the years in which she worked reduced hours. See 2 Am. Jur. 2d Administrative Law § 574 (a court will remand a case to the administrative agency where the agency fails to address an issue presented to it).

Initially, whether Appellant is entitled to purchase retirement service credit was an issue pertaining to this matter.[1] Nevertheless, at the hearing before the Hearing Officer, Appellant clearly stated that she was not looking to purchase service credit for the time she worked twenty-one hours per week; rather, Appellant was looking to receive one year of service credit for the years in which she worked reduced hours.[2] Sept. 10 Hr'g, 7:16-7:19; 73:17-74:6. Accordingly, since the Hearing Officer failed to address the primary issue pertaining to this matter, the Court is constrained to remand the matter to the Board to properly address the issue of whether Appellant is entitled to receive one year of service credit for the years 1990 through 1994 wherein Appellant worked twenty-one hours per week in a thirty-five-hour-per-week position. See Ferrelli v. Department of Employment Security, 106 R.I. 588, 261 A.2d 906 (1970) (finding that the Superior Court erred when it failed to remand the case to the board with direction to consider the issue raised by the testimony). "Where an agency fails to address an issue presented to it, [] generally [the court will] 'remand the case to [the hearing officer] for a determination.'" Morrison v. District of Columbia Department of Employment Services, 834 A.2d 890 (D.C. 2003) (quoting Branson v. District of Columbia Dep't of Employment Servs., 801 A.2d 975, 979 (D.C. 2002)).

[1] The issue appears to pertain to the period of time in which Appellant alleges to have been out of work on "Family Medical Leave" and obtained the leave "on an as-needed basis." (Ex. 1.) Since Appellant failed to submit the requisite documentation at the time of the hearing, this issue was not addressed and therefore, the issue was "denied without prejudice, until such time as [Appellant] submits the appropriate documentation to [ERSRI] for review and decision." (Decision at 3.) Accordingly, this Court is without jurisdiction to consider this issue. See Rhode Island Public Telecommunications Authority, 650 A.2d at 484 (citing Environmental Scientific Corp., 621 A.2d at 208) (judicial review is restricted to questions that the agency itself might properly entertain).

[2] The Board concurred that at the hearing before the Hearing Officer, counsel for Appellant disclaimed intent on Appellant's part to purchase service credit for the time during which she worked twenty-one hours per week between 1990 and 1994. See Jan. 13 Hr'g, 6:20-7:6.

In addition, at the hearing on January 13, 2010, the Board merely affirmed the decision of the Hearing Officer, thereby also failing to make findings of fact and any conclusions of law with respect to the issue of whether Appellant was entitled to receive a year of service credit for the years 1990 through 1994. Our Supreme Court has held that "the absence of required findings makes judicial review impossible, clearly frustrating § 42-35-15." East Greenwich Yacht Club v. Coastal Resources Mgmt. Council, 118 R.I. 559, 569, 376 A.2d 682, 687 (1997). The agency "must do more than make a motion and take a vote." Cranston Print Works Co. v. City of Cranston, 684 A.2d 689, 691 (R.I. 1996). In the instant matter, the Board's decision consists only of a motion and a unanimous vote to affirm the Hearing Officer's decision: the "decision of the [Board] is bereft of any fact finding [or] any conclusions of law." East Greenwich Yacht Club, 118 R.I. at 569, 376 A.2d at 687. Thus, the Board has failed to comply with the requirements of § 42-35-12.

Accordingly, the matter is remanded to the Board to make findings of fact and determinations of credibility with respect to the issue of whether Appellant is entitled to receive credit for the entire year rather than a fractional amount of credit, for the time 1990-1994. On remand, the Court directs the Board to consider the issue of Appellant's eligibility to receive one year of service credit towards retirement for the years at issue, 1990 through 1994, and to make the requisite findings of fact and conclusions of law in accordance with § 42-35-12.

## IV

## Conclusion

After review of the entire record, this case is remanded to the Board for further proceedings consistent with this Decision. Counsel shall present the appropriate Order for entry.